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TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 11--BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Sec. 201. Bribery of public officials and witnesses

(a) For the purpose of this section--

(1) the term ``public official" means Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror;

(2) the term ``person who has been selected to be a public official" means any person who has been nominated or appointed to be a public official, or has been officially informed that such person will be so nominated or appointed; and

(3) the term ``official act" means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit.

(b) Whoever--

(1) directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any other person or entity, with intent--

(A) to influence any official act; or

(B) to influence such public official or person who has been selected to be a public official to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) to induce such public official or such person who has been selected to be a public official to do or omit to do any act in violation of the lawful duty of such official or person;

(2) being a public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for:

(A) being influenced in the performance of any official act;

(B) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or

(C) being induced to do or omit to do any act in violation of the official duty of such official or person;

(3) directly or indirectly, corruptly gives, offers, or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or with intent to influence such person to absent himself therefrom;

(4) directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity in return for being influenced in testimony under oath or affirmation as a witness upon any such trial, hearing, or other proceeding, or in return for absenting himself therefrom;

shall be fined under this title or not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States.

(c) Whoever--

(1) otherwise than as provided by law for the proper discharge of official duty--

(A) directly or indirectly gives, offers, or promises anything of value to any public official, former public official, or person selected to be a public official, for or because of any official act performed or to be performed by such public official, former public official, or person selected to be a public official; or

(B) being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of any official act performed or to be performed by such official or person;

(2) directly or indirectly, gives, offers, or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of such person's absence therefrom;

(3) directly or indirectly, demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon any such trial, hearing, or other proceeding, or for or because of such person's absence therefrom;

shall be fined under this title or imprisoned for not more than two years, or both.

(d) Paragraphs (3) and (4) of subsection (b) and paragraphs (2) and (3) of subsection (c) shall not be construed to prohibit the payment or receipt of witness fees provided by law, or the payment, by the party upon whose behalf a witness is called and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing, or proceeding, or in the case of expert witnesses, a reasonable fee for time spent in the preparation of such opinion, and in appearing and testifying.

(e) The offenses and penalties prescribed in this section are separate from and in addition to those prescribed in sections 1503, 1504, and 1505 of this title.

(Added Pub. L. 87-849, Sec. 1(a), Oct. 23, 1962, 76 Stat. 1119; amended Pub. L. 91-405, title II, Sec. 204(d)(1), Sept. 22, 1970, 84 Stat. 853; Pub. L. 99-646, Sec. 46(a)-(1), Nov. 10, 1986, 100 Stat. 3601-3604; Pub. L. 103-322, title XXXIII, Secs. 330011(b), 330016(2)(D), Sept. 13, 1994, 108 Stat. 2144, 2148.)

Prior Provisions

A prior section 201, act June 25, 1948, ch. 645, 62 Stat. 691, prescribed penalties for anyone who offered or gave anything of value to an officer or other person to influence his decisions, prior to the general amendment of this chapter by Pub. L. 87-849, and is substantially covered by revised section 201.

Provisions similar to those comprising this section were contained in sections 201 to 213 of this title, prior to the general amendment of this chapter by Pub. L. 87-849.

Amendments

1994--Subsec. (b). Pub. L. 103-322, Sec. 330016(2)(D), which directed the amendment of "section 201" by inserting "under this title or" after "be fined" and "whichever is greater," before "or imprisoned", was executed by making the insertions in text of last par. of subsec. (b), and not in last par. of subsec. (c), to reflect the probable intent of Congress.

Pub. L. 103-322, Sec. 330011(b)(A), amended Pub. L. 99-646, Sec. 46(b)(1). See 1986 Amendment note below.

Subsec. (b)(1). Pub. L. 103-322, Sec. 330011(b), amended Pub. L. 99-646, Sec. 46(b). See 1986 Amendment note below.

1986--Pub. L. 99-646, Sec. 46(1), provided for alignment of margins of each subsection, paragraph, and subparagraph of this section.

Subsec. (a). Pub. L. 99-646, Sec. 46(a), substituted "section--" for "section:", designated provision defining "public official" as par. (1), inserted "the term" after "(1)", and substituted "Delegate" for "Delegate from the District of Columbia", "after such official has qualified" for "after he has qualified", and "juror;" for "juror; and"; designated provision defining "person who has been selected to be a public official" as par. (2), inserted "the term" after "(2)", and substituted "such person" for "he"; and designated provision defining "official act" as par. (3), inserted

``the term" after ``(3)", and substituted ``in such official's official capacity, or in such official's" for ``in his official capacity, or in his".

Subsec. (b). Pub. L. 99-646, Sec. 46(b)(1), as amended by Pub. L. 103-322, Sec. 330011(b)(A), substituted ``Whoever--" for ``Whoever," and inserted ``(1)" before ``directly".

Pub. L. 99-646, Sec. 46(e)(5), redesignated the undesignated par. which followed former subsec. (e) as concluding par. of subsec. (b) and substituted ``shall be fined not more than" for ``Shall be fined not more than \$20,000 or" and ``thing of value," for ``thing of value, whichever is greater,".

Subsec. (b)(1). Pub. L. 99-646, Sec. 46(b), as amended by Pub. L. 103-322, Sec. 330011(b), redesignated former subsec. (b) as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, and realigned their margins, and in subpar. (C) substituted ``the lawful duty of such official or person;" for ``his lawful duty, or".

Subsec. (b)(2). Pub. L. 99-646, Sec. 46(c), redesignated former subsec. (c) as par. (2), struck out ``Whoever," before ``being", substituted ``corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally" for ``corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself", redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, and realigned their margins, in subpar. (A) substituted ``the performance" for ``his performance" and struck out ``or" after ``act;", and in subpar. (C) substituted ``the official duty of such official or person;" for ``his official duty; or".

Subsec. (b)(3). Pub. L. 99-646, Sec. 46(d), redesignated former subsec. (d) as par. (3) and substituted ``directly" for ``Whoever, directly" and ``therefrom;" for ``therefrom; or".

Subsec. (b)(4). Pub. L. 99-646, Sec. 46(e), redesignated former subsec. (e) as par. (4), substituted ``directly" for ``Whoever, directly", ``demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally" for ``asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself", ``in testimony" for ``in his testimony", and ``therefrom;" for ``therefrom--".

Subsec. (c). Pub. L. 99-646, Sec. 46(f), (g)(1), (h)(1), (i)(1), redesignated former subsecs. (f) to (i) as subsec. (c)(1)(A), (B), (2), and (3), respectively. Former subsec. (c) redesignated (b)(2).

Pub. L. 99-646, Sec. 46(i)(6), redesignated the undesignated par. which followed former subsec. (i) as concluding par. of subsec. (c) and

substituted ``shall be fined under this title" for ``Shall be fined not more than \$10,000".

Subsec. (c)(1). Pub. L. 99-646, Sec. 46(f), (g), redesignated former subsec. (f) as par. (1) and substituted ``(1) otherwise" for ``, otherwise" and ``(A) directly" for ``, directly", redesignated former subsec. (g) as subpar. (B) and substituted ``being" for ``Whoever, being", ``indirectly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally" for ``indirectly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself", and ``by such official or person;" for ``by him; or".

Subsec. (c)(2). Pub. L. 99-646, Sec. 46(h), redesignated former subsec. (h) as par. (2) and substituted ``directly" for ``Whoever, directly" and ``such person's absence therefrom;" for ``his absence therefrom; or".

Subsec. (c)(3). Pub. L. 99-646, Sec. 46(i), redesignated former subsec. (i) as par. (3) and substituted ``directly" for ``Whoever, directly", ``demands, seeks, receives, accepts, or agrees to receive or accept" for ``asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive", ``personally" for ``for himself", ``by such person" for ``by him", and ``such person's absence therefrom;" for ``his absence therefrom--".

Subsec. (d). Pub. L. 99-646, Sec. 46(j), redesignated former subsec. (j) as (d), substituted ``Paragraphs (3) and (4) of subsection (b) and paragraphs (2) and (3) of subsection (c)" for ``Subsections (d), (e), (h), and (i)" and struck out ``involving a technical or professional opinion," after ``expert witnesses,". Former subsec. (d) redesignated (b)(3).

Subsecs. (e) to (k). Pub. L. 99-646, Sec. 46(f)-(k), redesignated former subsecs. (e) to (k) as (b)(4), (c)(1)(A), (B), (2), (3), (d), and (e), respectively.

1970--Subsec. (a). Pub. L. 91-405 included Delegate from District of Columbia in definition of ``public official".

Effective Date of 1994 Amendment

Section 330011(b) of Pub. L. 103-322 provided that the amendment made by that section is effective as of the date on which section 46(b) of Pub. L. 99-646 took effect.

Effective Date of 1986 Amendment

Section 46(m) of Pub. L. 99-646 provided that: ``The amendments made by this section [amending this section] shall take effect 30 days after the date of enactment of this Act [Nov. 10, 1986]."

Effective Date of 1970 Amendment

Amendment by Pub. L. 91-405 effective Sept. 22, 1970, see section 206(b) of Pub. L. 91-405, set out as an Effective Date note under section 25a of Title 2, The Congress.

Effective Date

Section 4 of Pub. L. 87-849 provided that: ``This Act [enacting this section and sections 202 to 209 and 218 of this title, redesignating sections 214, 215, 217 to 222 as 210, 211, 212 to 217 of this title respectively, repealing sections 223, 282, 284, 434, and 1914 of this title, and section 99 of former Title 5, Executive Departments and Government Officers and Employees, and enacting provisions set out as notes under section 281 and 282 of this title] shall take effect ninety days after the date of its enactment [Oct. 23, 1962]".

Short Title of 1996 Amendment

Pub. L. 104-177, Sec. 1, Aug. 6, 1996, 110 Stat. 1563, provided that: ``This Act [amending section 205 of this title] may be cited as the `Federal Employee Representation Improvement Act of 1996'."

Short Title of 1986 Amendment

Pub. L. 99-370, Sec. 1, Aug. 4, 1986, 100 Stat. 779, provided that: ``This Act [amending section 215 of this title and enacting provisions set out as a note under section 215 of this title] may be cited as the `Bank Bribery Amendments Act of 1985'."

Executive Order No. 11222

Ex. Ord. No. 11222, May 8, 1965, 30 F.R. 6469, as amended by Ex. Ord. No. 11590, Apr. 23, 1971, 36 F.R. 7831; Ex. Ord. No. 12107, Dec.

28, 1978, 44 F.R. 1055; Ex. Ord. No. 12565, Sept. 25, 1986, 51 F.R. 34437, which established standards of ethical conduct for government officers and employees, was revoked by Ex. Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended, set out as a note under section 7301 of Title 5, Government Organization and Employees.

Executive Order No. 12565

Ex. Ord. No. 12565, Sept. 25, 1986, 51 F.R. 34437, which amended Ex. Ord. No. 11222, formerly set out above, and provided confidentiality for financial reports filed pursuant to Ex. Ord. No. 11222, was revoked by Ex. Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended, set out as a note under section 7301 of Title 5, Government Organization and Employees.

Memorandum of Attorney General Regarding Conflict of Interest Provisions of Public Law 87-849, Feb. 1, 1963, 28 F.R. 985

January 28, 1963.

Public Law 87-849, ``To strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes," came into force January 21, 1963. A number of departments and agencies of the Government have suggested that the Department of Justice prepare and distribute a memorandum analyzing the conflict of interest provisions contained in the new act. I am therefore distributing the attached memorandum.

One of the main purposes of the new legislation merits specific mention. That purpose is to help the Government obtain the temporary or intermittent services of persons with special knowledge and skills whose principal employment is outside the Government. For the most part the conflict of interest statutes superseded by Public Law 87-849 imposed the same restraints on a person serving the Government temporarily or intermittently as on a full-time employee, and those statutes often had an unnecessarily severe impact on the former. As a result, they impeded the departments and agencies in the recruitment of experts for important work. Public Law 87-849 meets this difficulty by imposing a lesser array of prohibitions on temporary and intermittent employees than on regular employees. I believe that a widespread appreciation of this aspect of the new law will lead to a significant expansion of the pool of talent on which the departments and agencies can draw for their special needs.

Robert F. Kennedy,

Attorney General.

Memorandum re the Conflict of Interest Provisions of Public Law 87-849,
76 Stat. 1119, Approved October 23, 1962

Introduction

Public Law 87-849, which came into force January 21, 1963, affected seven statutes which applied to officers and employees of the Government and were generally spoken of as the "conflict of interest" laws. These included six sections of the criminal code, 18 U.S.C. 216, 281, 283, 284, 434 and 1914, and a statute containing no penalties, section 190 of the Revised Statutes (5 U.S.C. 99). Public Law 87-849 (sometimes referred to hereinafter as "the Act") repealed section 190 and one of the criminal statutes, 18 U.S.C. 216, without replacing them. In addition it repealed and supplanted the other five criminal statutes. It is the purpose of this memorandum to summarize the new law and to describe the principal differences between it and the legislation it has replaced.

The Act accomplished its revisions by enacting new sections 203, 205, 207, 208 and 209 of title 18 of the United States Code and providing that they supplant the above-mentioned sections 281, 283, 284, 434 and 1914 of title 18 respectively. It will be convenient, therefore, after summarizing the principal provisions of the new sections, to examine each section separately, comparing it with its precursor before passing to the next. First of all, however, it is necessary to describe the background and provisions of the new 18 U.S.C. 202(a), which has no counterpart among the statutes formerly in effect.

Special Government Employees [New 18 U.S.C. 202(a)]

In the main the prior conflict of interest laws imposed the same restrictions on individuals who serve the Government intermittently or for a short period of time as on those who serve full-time. The consequences of this generalized treatment were pointed out in the following paragraph of the Senate Judiciary Committee report on the bill which became Public Law 87-849: {3\

In considering the application of present law in relation to the Government's utilization of temporary or intermittent consultants and advisers, it must be emphasized that most of the existing conflict-of-interest statutes were enacted in the 19th century--that is, at a time

when persons outside the Government rarely served it in this way. The laws were therefore directed at activities of regular Government employees, and their present impact on the occasionally needed experts--those whose main work is performed outside the Government--is unduly severe. This harsh impact constitutes an appreciable deterrent to the Government's obtaining needed part-time services.

The recruiting problem noted by the Committee generated a major part of the impetus for the enactment of Public Law 87-849. The Act dealt with the problem by creating a category of Government employees termed ``special Government employees" and by excepting persons in this category from certain of the prohibitions imposed on ordinary employees. The new 18 U.S.C. 202(a) defines the term ``special Government employee" to include, among others, officers and employees of the departments and agencies who are appointed or employed to serve, with or without compensation, for not more than 130 days during any period of 365 consecutive days either on a full-time or intermittent basis.

Summary of the Main Conflict of Interest Provisions of Public Law 87-849

A regular officer or employee of the Government--that is, one appointed or employed to serve more than 130 days in any period of 365 days--is in general subject to the following major prohibitions (the citations are to the new sections of Title 18):

1. He may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies both to paid and unpaid representation of another (18 U.S.C. 203 and 205).

2. He may not participate in his governmental capacity in any matter in which he, his spouse, minor child, outside business associate or person with whom he is negotiating for employment has a financial interest (18 U.S.C. 208).

3. He may not, after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207(a)).

4. He may not, for 1 year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibilities \4\ during the last year of his Government service (18 U.S.C. 207(b)). This

temporary restraint of course gives way to the permanent restraint described in paragraph 3 if the matter is one in which he participated personally and substantially.

5. He may not receive any salary, or supplementation of his Government salary, from a private source as compensation for his services to the Government (18 U.S.C. 209).

A special Government employee is in general subject only to the following major prohibitions:

1. (a) He may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest and in which he has at any time participated personally and substantially for the Government (18 U.S.C. 203 and 205).

(b) He may not, except in the discharge of his official duties, represent anyone else in a matter pending before the agency he serves unless he has served there no more than 60 days during the past 365 (18 U.S.C. 203 and 205). He is bound by this restraint despite the fact that the matter is not one in which he has ever participated personally and substantially.

The restrictions described in subparagraphs (a) and (b) apply to both paid and unpaid representation of another. These restrictions in combination are, of course, less extensive than the one described in the corresponding paragraph 1 in the list set forth above with regard to regular employees.

2. He may not participate in his governmental capacity in any matter in which he, his spouse, minor child, outside business associate or person with whom he is negotiating for employment has a financial interest (18 U.S.C. 208).

3. He may not, after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207(a)).

4. He may not, for 1 year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibility during the last year of his Government service (18 U.S.C. 207(b)). This temporary restraint of course gives way to the permanent restriction described in paragraph 3 if the matter is one in which he participated personally and substantially.

It will be seen that paragraphs 2, 3, and 4 for special Government employees are the same as the corresponding paragraphs for regular

employees. Paragraph 5 for the latter, describing the bar against the receipt of salary for Government work from a private source, does not apply to special Government employees.

As appears below, there are a number of exceptions to the prohibitions summarized in the two lists.

Comparison of Old and New Conflict of Interest Sections of Title 18, United States Code

New 18 U.S.C. 203. Subsection (a) of this section in general prohibits a Member of Congress and an officer or employee of the United States in any branch or agency of the Government from soliciting or receiving compensation for services rendered on behalf of another person before a Government department or agency in relation to any particular matter in which the United States is a party or has a direct and substantial interest. The subsection does not preclude compensation for services rendered on behalf of another in court.

Subsection (a) is essentially a rewrite of the repealed portion of 18 U.S.C. 281. However, subsections (b) and (c) have no counterparts in the previous statutes.

Subsection (b) makes it unlawful for anyone to offer or pay compensation the solicitation or receipt of which is barred by subsection (a).

Subsection (c) narrows the application of subsection (a) in the case of a person serving as a special Government employee to two, and only two, situations. First, subsection (c) bars him from rendering services before the Government on behalf of others, for compensation, in relation to a matter involving a specific party or parties in which he has participated personally and substantially in the course of his Government duties. And second, it bars him from such activities in relation to a matter involving a specific party or parties, even though he has not participated in the matter personally and substantially, if it is pending in his department or agency and he has served therein more than 60 days in the immediately preceding period of a year.

New 18 U.S.C. 205. This section contains two major prohibitions. The first prevents an officer or employee of the United States in any branch or agency of the Government from acting as agent or attorney for prosecuting any claim against the United States, including a claim in court, whether for compensation or not. It also prevents him from receiving a gratuity, or a share or interest in any such claim, for assistance in the prosecution thereof. This portion of section 205 is similar to the repealed portion of 18 U.S.C. 283, which dealt only with

claims against the United States, but it omits a bar contained in the latter--i.e., a bar against rendering uncompensated aid or assistance in the prosecution or support of a claim against the United States.

The second main prohibition of section 205 is concerned with more than claims. It precludes an officer or employee of the Government from acting as agent or attorney for anyone else before a department, agency or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest.

Section 205 provides for the same limited application to a special Government employee as section 203. In short, it precludes him from acting as agent or attorney only (1) in a matter involving a specific party or parties in which he has participated personally and substantially in his governmental capacity, and (2) in a matter involving a specific party or parties which is before his department or agency, if he has served therein more than 60 days in the year past.

Since new sections 203 and 205 extend to activities in the same range of matters, they overlap to a greater extent than did their predecessor sections 281 and 283. The following are the few important differences between sections 203 and 205:

1. Section 203 applies to Members of Congress as well as officers and employees of the Government; section 205 applies only to the latter.
2. Section 203 bars services rendered for compensation solicited or received, but not those rendered without such compensation; section 205 bars both kinds of services.
3. Section 203 bars services rendered before the departments and agencies but not services rendered in court; section 205 bars both.

It will be seen that while section 203 is controlling as to Members of Congress, for all practical purposes section 205 completely overshadows section 203 in respect of officers and employees of the Government.

Section 205 permits a Government officer or employee to represent another person, without compensation, in a disciplinary, loyalty or other personnel matter. Another provision declares that the section does not prevent an officer or employee from giving testimony under oath or making statements required to be made under penalty for perjury or contempt.\5\

Section 205 also authorizes a limited waiver of its restrictions and those of section 203 for the benefit of an officer or employee, including a special Government employee, who represents his own parents, spouse or child, or a person or estate he serves as a fiduciary. The waiver is available to the officer or employee, whether acting for any such person with or without compensation, but only if approved by the official making appointments to his position. And in no event does the

waiver extend to his representation of any such person in matters in which he has participated personally and substantially or which, even in the absence of such participation, are the subject of his official responsibility.

Finally, section 205 gives the head of a department or agency the power, notwithstanding any applicable restrictions in its provisions or those of section 203, to allow a special Government employee to represent his regular employer or other outside organization in the performance of work under a Government grant or contract. However, this action is open to the department or agency head only upon his certification, published in the Federal Register, that the national interest requires it.

New 18 U.S.C. 207. Subsections (a) and (b) of this section contain post-employment prohibitions applicable to persons who have ended service as officers or employees of the executive branch, the independent agencies or the District of Columbia.\6\ The prohibitions for persons who have served as special Government employees are the same as for persons who have performed regular duties.

The restraint of subsection (a) is against a former officer or employee's acting as agent or attorney for anyone other than the United States in connection with certain matters, whether pending in the courts or elsewhere. The matters are those involving a specific party or parties in which the United States is one of the parties or has a direct and substantial interest and in which the former officer or employee participated personally and substantially while holding a Government position.

Subsection (b) sets forth a 1-year postemployment prohibition in respect of those matters which were within the area of official responsibility of a former officer or employee at any time during the last year of his service but which do not come within subsection (a) because he did not participate in them personally and substantially. More particularly, the prohibition of subsection (b) prevents his personal appearance in such matters before a court or a department or agency of the Government as agent or attorney for anyone other than the United States.\7\ Where, in the year prior to the end of his service, a former officer or employee has changed areas of responsibility by transferring from one agency to another, the period of his postemployment ineligibility as to matters in a particular area ends 1 year after his responsibility for that area ends. For example, if an individual transfers from a supervisory position in the Internal Revenue Service to a supervisory position in the Post Office Department and leaves that department for private employment 9 months later, he will be free of the restriction of subsection (b) in 3 months insofar as

Internal Revenue matters are concerned. He will of course be bound by it for a year in respect of Post Office Department matters.

The proviso following subsections (a) and (b) authorizes an agency head, notwithstanding anything to the contrary in their provisions, to permit a former officer or employee with outstanding scientific qualifications to act as attorney or agent or appear personally before the agency for another in a matter in a scientific field. This authority may be exercised by the agency head upon a "national interest" certification published in the Federal Register.

Subsections (a) and (b) describe the activities they forbid as being in connection with "particular matter[s] involving a specific party or parties" in which the former officer or employee had participated. The quoted language does not include general rulemaking, the formulation of general policy or standards, or other similar matters. Thus, past participation in or official responsibility for a matter of this kind on behalf of the Government does not disqualify a former employee from representing another person in a proceeding which is governed by the rule or other result of such matter.

Subsection (a) bars permanently a greater variety of actions than subsection (b) bars temporarily. The conduct made unlawful by the former is any action as agent or attorney, while that made unlawful by the latter is a personal appearance as agent or attorney. However, neither subsection precludes postemployment activities which may fairly be characterized as no more than aiding or assisting another. An individual who has left an agency to accept private employment may, for example, immediately perform technical work in his company's plant in relation to a contract for which he had official responsibility--or, for that matter, in relation to one he helped the agency negotiate. On the other hand, he is forbidden for a year, in the first case, to appear personally before the agency as the agent or attorney of his company in connection with a dispute over the terms of the contract. And he may at no time appear personally before the agency or otherwise act as agent or attorney for his company in such dispute if he helped negotiate the contract.

Comparing subsection (a) with the antecedent 18 U.S.C. 284 discloses that it follows the latter in limiting disqualification to cases where a former officer or employee actually participated in a matter for the Government. However, subsection (a) covers all matters in which the United States is a party or has a direct and substantial interest and not merely the "claims against the United States" covered by 18 U.S.C. 284. Subsection (a) also goes further than the latter in imposing a lifetime instead of a 2-year bar. Subsection (b) has no parallel in 18 U.S.C. 284 or any other provision of the former conflict of interest

statutes.

It will be seen that subsections (a) and (b) in combination are less restrictive in some respects, and more restrictive in others, than the combination of the prior 18 U.S.C. 284 and 5 U.S.C. 99. Thus, former officers or employees who were outside the Government when the Act came into force on January 21, 1963, will in certain situations be enabled to carry on activities before the Government which were previously barred. For example, the repeal of 5 U.S.C. 99 permits an attorney who left an executive department for private practice a year before to take certain cases against the Government immediately which would be subject to the bar of 5 U.S.C. 99 for another year. On the other hand, former officers or employees became precluded on and after January 21, 1963 from engaging or continuing to engage in certain activities which were permissible until that date. This result follows from the replacement of the 2-year bar of 18 U.S.C. 284 with a lifetime bar of subsection (a) in comparable situations, from the increase in the variety of matters covered by subsection (a) as compared with 18 U.S.C. 284 and from the introduction of the 1-year bar of subsection (b).

Subsection (c) of section 207 pertains to an individual outside the Government who is in a business or professional partnership with someone serving in the executive branch, an independent agency or the District of Columbia. The subsection prevents such individual from acting as attorney or agent for anyone other than the United States in any matter, including those in court, in which his partner in the Government is participating or has participated or which are the subject of his partner's official responsibility. Although included in a section dealing largely with post-employment activities, this provision is not directed to the postemployment situation.

The paragraph at the end of section 207 also pertains to individuals in a partnership but sets forth no prohibition. This paragraph, which is of importance mainly to lawyers in private practice, rules out the possibility that an individual will be deemed subject to section 203, 205, 207(a) or 207(b) solely because he has a partner who serves or has served in the Government either as a regular or a special Government employee.

New 18 U.S.C. 208. This section forbids certain actions by an officer or employee of the Government in his role as a servant or representative of the Government. Its thrust is therefore to be distinguished from that of sections 203 and 205 which forbid certain actions in his capacity as a representative of persons outside the Government.

Subsection (a) in substance requires an officer or employee of the executive branch, an independent agency or the District of Columbia,

including a special Government employee, to refrain from participating as such in any matter in which, to his knowledge, he, his spouse, minor child or partner has a financial interest. He must also remove himself from a matter in which a business or nonprofit organization with which he is connected or is seeking employment has a financial interest.

Subsection (b) permits the agency of an officer or employee to grant him an ad hoc exemption from subsection (a) if the outside financial interest in a matter is deemed not substantial enough to have an effect on the integrity of his services. Financial interests of this kind may also be made nondisqualifying by a general regulation published in the Federal Register.

Section 208 is similar in purpose to the former 18 U.S.C. 434 but prohibits a greater variety of conduct than the "transaction of business with * * * [a] business entity" to which the prohibition of section 434 was limited. In addition, the provision in section 208 including the interests of a spouse and others is new, as is the provision authorizing exemptions for insignificant interest.

New 18 U.S.C. 209. Subsection (a) prevents an officer or employee of the executive branch, an independent agency or the District of Columbia from receiving, and anyone from paying him, any salary or supplementation of salary from a private source as compensation for his services to the Government. This provision uses much of the language of the former 18 U.S.C. 1914 and does not vary from that statute in substance. The remainder of section 209 is new.

Subsection (b) specifically authorizes an officer or employee covered by subsection (a) to continue his participation in a bona fide pension plan or other employee welfare or benefit plan maintained by a former employer.

Subsection (c) provides that section 209 does not apply to a special Government employee or to anyone serving the Government without compensation whether or not he is a special Government employee.

Subsection (d) provides that the section does not prohibit the payment or acceptance of contributions, awards or other expenses under the terms of the Government Employees Training Act. (72 Stat. 327, 5 U.S.C. 2301-2319).

Statutory Exemptions From Conflict of Interest Laws

Congress has in the past enacted statutes exempting persons in certain positions--usually advisory in nature--from the provisions of some or all of the former conflict of interest laws. Section 2 of the Act grants corresponding exemptions from the new laws with respect to

legislative and judicial positions carrying such past exemptions. However, section 2 excludes positions in the executive branch, an independent agency and the District of Columbia from this grant. As a consequence, all statutory exemptions for persons serving in these sectors of the Government ended on January 21, 1963.

Retired Officers of the Armed Forces

Public Law 87-849 enacted a new 18 U.S.C. 206 which provides in general that the new sections 203 and 205, replacing 18 U.S.C. 281 and 283, do not apply to retired officers of the armed forces and other uniformed services. However, 18 U.S.C. 281 and 283 contain special restrictions applicable to retired officers of the armed forces which are left in force by the partial repealer of those statutes set forth in section 2 of the Act.

The former 18 U.S.C. 284, which contained a 2-year disqualification against postemployment activities in connection with claims against the United States, applied by its terms to persons who had served as commissioned officers and whose active service had ceased either by reason of retirement or complete separation. Its replacement, the broader 18 U.S.C. 207, also applies to persons in those circumstances. Section 207, therefore applies to retired officers of the armed forces and overlaps the continuing provisions of 18 U.S.C. 281 and 283 applicable to such officers although to a different extent than did 18 U.S.C. 284.

Voiding Transactions in Violation of the Conflict of Interest or Bribery Laws

Public Law 87-849 enacted a new section, 18 U.S.C. 218, which did not supplant a pre-existing section of the criminal code. However, it was modeled on the last sentence of the former 18 U.S.C. 216 authorizing the President to declare a Government contract void which was entered into in violation of that section. It will be recalled that section 216 was one of the two statutes repealed without replacement.

The new 18 U.S.C. 218 grants the President and, under Presidential regulations, an agency head the power to void and rescind any transaction or matter in relation to which there has been a "final conviction" for a violation of the conflict of interest or bribery laws. The section also authorizes the Government's recovery, in addition to any penalty prescribed by law or in a contract, of the amount

expended or thing transferred on behalf of the Government.

Section 218 specifically provides that the powers it grants are ``in addition to any other remedies provided by law." Accordingly, it would not seem to override the decision in *United States v. Mississippi Valley Generating Co.*, 364 U.S. 520 (1961), a case in which there was no ``final conviction."

Bibliography

Set forth below are the citations to the legislative history of Public Law 87-849 and a list of recent material which is pertinent to a study of the act. The listed 1960 report of the Association of the Bar of the City of New York is particularly valuable. For a comprehensive bibliography of earlier material relating to the conflict of interest laws, see 13 *Record of the Association of the Bar of the City of New York* 323 (May 1958).

Legislative History of Public Law 87-849 (H.R. 8140, 87th Cong.)

1. Hearings of June 1 and 2, 1961, before the Antitrust Subcommittee (Subcommittee No. 5) of the House Judiciary Committee, 87th Cong., 1st sess., ser. 3, on Federal Conflict of Interest Legislation.
2. H. Rept. 748, 87th Cong., 1st sess.
3. 107 Cong., Rec. 14774.
4. Hearing of June 21, 1962, before the Senate Judiciary Committee, 87th Cong., 2d sess., on Conflicts of Interest.
5. S. Rept. 2213, 87th Cong., 2d sess.
6. 108 Cong. Rec. 20805 and 21130 (daily ed., October 3 and 4, 1962).

Other Material

1. President's special message to Congress, April 27, 1961, and attached draft bill, 107 Cong. Rec. 6835.
2. President's Memorandum of February 9, 1962, to the heads of executive departments and agencies entitled Preventing Conflicts of Interest on the Part of Advisers and Consultants to the Government, 27 F.R. 1341.
3. 42 Op. A.G. No. 6, January 31, 1962.
4. Memorandum of December 10, 1956, for the Attorney General from

the Office of Legal Counsel re conflict of interest statutes, Hearings before the Antitrust Subcommittee (Subcommittee No. 5) of House Judiciary Committee, 86th Cong., 2d sess., ser. 17, pt. 2, p. 619.

5. Staff report of Antitrust Subcommittee (Subcommittee No. 5) of House Judiciary Committee, 85th Cong., 2d sess., Federal Conflict of Interest Legislation (Comm. Print 1958).

6. Report of the Association of the Bar of the City of New York, Conflict of Interest and Federal Service (Harvard Univ. Press 1960).

Footnotes

\1\ Section 190 of the Revised Statutes (5 U.S.C. 99), which was repealed by section 3 of Public Law 87-849, applied to a former officer or employee of the Government who had served in a department of the executive branch. It prohibited him, for a period of two years after his employment had ceased, from representing anyone in the prosecution of a claim against the United States which was pending in that or any other executive department during his period of employment. The subject of post-employment activities of former Government officers and employees was also dealt with in another statute which was repealed, 18 U.S.C. 284. Public Law 87-849 covers the subject in a single section enacted as the new 18 U.S.C. 207.

18 U.S.C. 216, which was repealed by section 1(c) of Public Law 87-849, prohibited the payment to or acceptance by a Member of Congress or officer or employee of the Government of any money or thing of value for giving or procuring a Government contract. Since this offense is within the scope of the newly enacted 18 U.S.C. 201 and 18 U.S.C. 203, relating to bribery and conflicts of interest, respectively, section 216 is no longer necessary.

\2\ See section 2 of Public Law 87-849. 18 U.S.C. 281 and 18 U.S.C. 283 were not completely set aside by section 2 but remain in effect to the extent that they apply to retired officers of the Armed Forces (see "Retired Officers of the Armed Forces," infra).

\3\ S. Rept. 2213, 87th Cong., 2d sess., p. 6.

\4\ The term "official responsibility" is defined by the new 18 U.S.C. 202(b) to mean "the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action."

\5\ These two provisions of section 205 refer to an "officer or employee" and not, as do certain of the other provisions of the Act, to an "officer or employee, including a special Government employee."

However, it is plain from the definition in section 202(a) that a special Government employee is embraced within the comprehensive term "officer or employee." There would seem to be little doubt, therefore, that the instant provisions of section 205 apply to special Government employees even in the absence of an explicit reference to them.

\6\ The prohibitions of the two subsections apply to persons ending service in these areas whether they leave the Government entirely or move to the legislative or judicial branch. As a practical matter, however, the prohibitions would rarely be significant in the latter situation because officers and employees of the legislative and judicial branches are covered by sections 203 and 205.

\7\ Neither section 203 nor section 205 prevents a special Government employee, during his period of affiliation with the Government, from representing another person before the Government in a particular matter only because it is within his official responsibility. Therefore the inclusion of a former special Government employee within the 1-year postemployment ban of subsection (b) may subject him to a temporary restraint from which he was free prior to the end of his Government service. However, since special Government employees usually do not have "official responsibility," as that term is defined in section 202(b), their inclusion within the 1-year ban will not have a widespread effect.

\8\ Subsection (a), as it first appeared in H.R. 8140, the bill which became Public Law 87-849, made it unlawful for a former officer or employee to act as agent or attorney for, or aid or assist, anyone in a matter in which he had participated. The House Judiciary Committee struck the underlined words, and the bill became law without them. It should be noted also that the repealed provisions of 18 U.S.C. 283 made the distinction between one's acting as agent or attorney for another and his aiding or assisting another.

Section Referred to in Other Sections

This section is referred to in sections 14, 1961, 2516 of this title; title 5 section 3113; title 7 section 84; title 12 sections 1441a, 1822, 2245; title 15 section 4805; title 43 section 1475a.

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TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 11--BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Sec. 202. Definitions

(a) For the purpose of sections 203, 205, 207, 208, and 209 of this title the term "special Government employee" shall mean an officer or employee of the executive or legislative branch of the United States Government, of any independent agency of the United States or of the District of Columbia, who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis, a part-time United States commissioner, a part-time United States magistrate judge, or, regardless of the number of days of appointment, an independent counsel appointed under chapter 40 of title 28 and any person appointed by that independent counsel under section 594(c) of title 28. Notwithstanding the next preceding sentence, every person serving as a part-time local representative of a Member of Congress in the Member's home district or State shall be classified as a special Government employee. Notwithstanding section 29(c) and (d) \1\ of the Act of August 10, 1956 (70A Stat. 632; 5 U.S.C. 30r(c) and (d)), a Reserve officer of the Armed Forces, or an officer of the National Guard of the United States, unless otherwise an officer or employee of the United States, shall be classified as a special Government employee while on active duty solely for training. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is voluntarily serving a period of extended active duty in excess of one hundred and thirty days shall be classified as an officer of the United States within the meaning of section 203 and sections 205 through 209 and 218. A Reserve officer of the Armed Forces or an officer of the

National Guard of the United States who is serving involuntarily shall be classified as a special Government employee. The terms "officer or employee" and "special Government employee" as used in sections 203, 205, 207 through 209, and 218, shall not include enlisted members of the Armed Forces.

\1\ See References in Text note below.

(b) For the purposes of sections 205 and 207 of this title, the term "official responsibility" means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.

(c) Except as otherwise provided in such sections, the terms "officer" and "employee" in sections 203, 205, 207 through 209, and 218 of this title shall not include the President, the Vice President, a Member of Congress, or a Federal judge.

(d) The term "Member of Congress" in sections 204 and 207 means--

- (1) a United States Senator; and
- (2) a Representative in, or a Delegate or Resident Commissioner to, the House of Representatives.

(e) As used in this chapter, the term--

(1) "executive branch" includes each executive agency as defined in title 5, and any other entity or administrative unit in the executive branch;

(2) "judicial branch" means the Supreme Court of the United States; the United States courts of appeals; the United States district courts; the Court of International Trade; the United States bankruptcy courts; any court created pursuant to article I of the United States Constitution, including the Court of Appeals for the Armed Forces, the United States Court of Federal Claims, and the United States Tax Court, but not including a court of a territory or possession of the United States; the Federal Judicial Center; and any other agency, office, or entity in the judicial branch; and

(3) "legislative branch" means--

(A) the Congress; and

(B) the Office of the Architect of the Capitol, the United States Botanic Garden, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, the United States Capitol Police, and any other agency, entity, office, or commission established in the legislative branch.

(Added Pub. L. 87-849, Sec. 1(a), Oct. 23, 1962, 76 Stat. 1121; amended Pub. L. 90-578, title III, Sec. 301(b), Oct. 17, 1968, 82 Stat. 1115; Pub. L. 100-191, Sec. 3(a), Dec. 15, 1987, 101 Stat. 1306; Pub. L. 101-194, title IV, Sec. 401, Nov. 30, 1989, 103 Stat. 1747; Pub. L. 101-280, Sec. 5(a), May 4, 1990, 104 Stat. 158; Pub. L. 101-650, title III, Sec. 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 102-572, title IX, Sec. 902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103-337, div. A, title IX, Sec. 924(d)(1)(B), Oct. 5, 1994, 108 Stat. 2832.)

References in Text

Section 29(c) and (d) of the Act of August 10, 1956 (70A Stat. 632; 5 U.S.C. 30r(c) and (d)), referred to in subsec. (a), was repealed and the provisions thereof were reenacted as sections 502, 2105(d), and 5534, of Title 5, Government Organization and Employees, by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 278.

Prior Provisions

A prior section 202, act June 25, 1948, ch. 645, 62 Stat. 691, prescribed penalties for any officer or other person who accepted or solicited anything of value to influence his decision, prior to the general amendment of this chapter by Pub. L. 87-849, and is substantially covered by revised section 201.

Amendments

1994--Subsec. (e)(2). Pub. L. 103-337 substituted "Court of Appeals for the Armed Forces" for "Court of Military Appeals".

1992--Subsec. (e)(2). Pub. L. 102-572 substituted "United States Court of Federal Claims" for "United States Claims Court".

1990--Subsec. (c). Pub. L. 101-280, Sec. 5(a)(1), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "Except as otherwise provided in such sections, the terms 'officer' and 'employee' in sections 203, 205, 207, 208, and 209 of this title, mean those individuals defined in sections 2104 and 2105 of title 5. The terms 'officer' and 'employee' shall not include the President, the Vice President, a Member of Congress, or a Federal judge."

Subsec. (d). Pub. L. 101-280, Sec. 5(a)(2), substituted "means" for "shall include".

Subsec. (e)(1). Pub. L. 101-280, Sec. 5(a)(3)(1), substituted ``includes each" for ``means any".

Subsec. (e)(3)(A). Pub. L. 101-280, Sec. 5(a)(3)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ``a Member of Congress, or any officer or employee of the United States Senate or United States House of Representatives; and".

Subsec. (e)(3)(B). Pub. L. 101-280, Sec. 5(a)(3)(2)(B), substituted ``the Office" for ``an officer or employee".

1989--Subsecs. (c) to (e). Pub. L. 101-194 added subsecs. (c) to (e).

1987--Subsec. (a). Pub. L. 100-191 expanded definition of ``special Government employee" to include an independent counsel appointed under chapter 40 of title 28 and any person appointed by that independent counsel under section 594(c) of title 28, regardless of the number of days of appointment.

1968--Subsec. (a). Pub. L. 90-578 substituted ``a part-time United States commissioner, or a part-time United States magistrate" for ``or a part-time United States Commissioner".

Change of Name

``United States magistrate judge" substituted for ``United States magistrate" in subsec. (a) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

Effective Date of 1992 Amendment

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

Effective Date of 1987 Amendment

Amendment by Pub. L. 100-191 effective Dec. 15, 1987, and applicable to independent counsel proceedings under 28 U.S.C. 591 et seq. pending on that date as well as to proceedings on and after that date, see section 6 of Pub. L. 100-191, set out as a note under section 591 of Title 28, Judiciary and Judicial Procedure.

Effective Date of 1968 Amendment

Amendment by Pub. L. 90-578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90-578, see section 403 of Pub. L. 90-578, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

Effective Date

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87-849, set out as a note under section 201 of this title.

Section Referred to in Other Sections

This section is referred to in section 14 of this title; title 5 section 568; title 7 sections 2009aa-1, 5903; title 12 section 2245; title 15 sections 3710d, 4805; title 22 sections 3507, 3508; title 26 sections 1043, 4946; title 28 sections 594, 995; title 35 section 5; title 40 App. section 108.

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TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 11--BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Sec. 203. Compensation to Members of Congress, officers, and
others in matters affecting the Government

(a) Whoever, otherwise than as provided by law for the proper
discharge of official duties, directly or indirectly--

(1) demands, seeks, receives, accepts, or agrees to receive or
accept any compensation for any representational services, as agent
or attorney or otherwise, rendered or to be rendered either
personally or by another--

(A) at a time when such person is a Member of Congress,
Member of Congress Elect, Delegate, Delegate Elect, Resident
Commissioner, or Resident Commissioner Elect; or

(B) at a time when such person is an officer or employee or
Federal judge of the United States in the executive,
legislative, or judicial branch of the Government, or in any
agency of the United States,

in relation to any proceeding, application, request for a ruling or
other determination, contract, claim, controversy, charge,
accusation, arrest, or other particular matter in which the United
States is a party or has a direct and substantial interest, before
any department, agency, court, court-martial, officer, or any civil,
military, or naval commission; or

(2) knowingly gives, promises, or offers any compensation for
any such representational services rendered or to be rendered at a
time when the person to whom the compensation is given, promised, or
offered, is or was such a Member, Member Elect, Delegate, Delegate
Elect, Commissioner, Commissioner Elect, Federal judge, officer, or

employee;

shall be subject to the penalties set forth in section 216 of this title.

(b) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly--

(1) demands, seeks, receives, accepts, or agrees to receive or accept any compensation for any representational services, as agent or attorney or otherwise, rendered or to be rendered either personally or by another, at a time when such person is an officer or employee of the District of Columbia, in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the District of Columbia is a party or has a direct and substantial interest, before any department, agency, court, officer, or commission; or

(2) knowingly gives, promises, or offers any compensation for any such representational services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was an officer or employee of the District of Columbia;

shall be subject to the penalties set forth in section 216 of this title.

(c) A special Government employee shall be subject to subsections (a) and (b) only in relation to a particular matter involving a specific party or parties--

(1) in which such employee has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise; or

(2) which is pending in the department or agency of the Government in which such employee is serving except that paragraph (2) of this subsection shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

(d) Nothing in this section prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for or otherwise representing his parents, spouse, child, or any person for whom, or for any estate for

which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except--

(1) in those matters in which he has participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or

(2) in those matters that are the subject of his official responsibility,

subject to approval by the Government official responsible for appointment to his position.

(e) Nothing in this section prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States if the head of the department or agency concerned with the grant or contract certifies in writing that the national interest so requires and publishes such certification in the Federal Register.

(f) Nothing in this section prevents an individual from giving testimony under oath or from making statements required to be made under penalty of perjury.

(Added Pub. L. 87-849, Sec. 1(a), Oct. 23, 1962, 76 Stat. 1121; amended Pub. L. 91-405, title II, Sec. 204(d)(2), (3), Sept. 22, 1970, 84 Stat. 853; Pub. L. 99-646, Sec. 47(a), Nov. 10, 1986, 100 Stat. 3604; Pub. L. 101-194, title IV, Sec. 402, Nov. 30, 1989, 103 Stat. 1748; Pub. L. 101-280, Sec. 5(b), May 4, 1990, 104 Stat. 159.)

Prior Provisions

A prior section 203, act June 25, 1948, ch. 645, 62 Stat. 692, related to the acceptance or demand by district attorneys, or marshals and their assistants of any fee other than provided by law, prior to the general amendment of this chapter by Pub. L. 87-849 and is substantially covered by revised section 201.

Provisions similar to those comprising this section were contained in section 281 of this title prior to the repeal of such section and the general amendment of this chapter by Pub. L. 87-849.

Amendments

1990--Subsec. (a)(1)(B). Pub. L. 101-280, Sec. 5(b)(1), inserted

``or Federal judge" after ``employee".

Subsec. (a)(2). Pub. L. 101-280, Sec. 5(b)(2), inserted

``Commissioner Elect, Federal judge," after ``Commissioner,".

Subsec. (b)(2). Pub. L. 101-280, Sec. 5(b)(3), inserted

``representational" before ``services".

Subsec. (d)(1). Pub. L. 101-280, Sec. 5(b)(4), substituted

``Government employee or as a special Government employee" for

``Government employee,".

Subsec. (f). Pub. L. 101-280, Sec. 5(b)(5), added subsec. (f).

1989--Subsec. (a). Pub. L. 101-194, Sec. 402(3), in concluding provisions, substituted ``shall be subject to the penalties set forth in section 216 of this title" for ``shall be fined under this title or imprisoned for not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States".

Subsec. (a)(1). Pub. L. 101-194, Sec. 402(1), (2), (7), in introductory provisions, substituted ``representational services, as agent or attorney or otherwise," for ``services", in concluding provisions, inserted ``court," after ``department, agency," and in subpar. (B), struck out ``including the District of Columbia," after ``agency of the United States".

Subsec. (a)(2). Pub. L. 101-194, Sec. 402(4)-(6), inserted ``representational" before ``services", ``Member Elect," after ``Member," and ``Delegate Elect," after ``Delegate,".

Subsec. (b). Pub. L. 101-194, Sec. 402(9), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 101-194, Sec. 402(8), redesignated subsec. (b) as (c) and substituted ``subsections (a) and (b)" for ``subsection (a)".

Subsecs. (d), (e). Pub. L. 101-194, Sec. 402(10), added subsecs. (d) and (e).

1986--Pub. L. 99-646, Sec. 47(a)(3)(D), provided for alignment of margins of each subsection, paragraph, and subparagraph of this section.

Subsec. (a). Pub. L. 99-646, Sec. 47(a)(1), (2), substituted ``indirectly--" for ``indirectly" in introductory provisions, redesignated the undesignated par. which followed former subsec. (b) as concluding par. of subsec. (a), and substituted ``shall be fined under this title" for ``Shall be fined not more than \$10,000".

Subsec. (a)(1). Pub. L. 99-646, Sec. 47(a)(1), substituted ``(1) demands, seeks, receives, accepts, or agrees to receive or accept any" for ``receives or agrees to receive, or asks, demands, solicits, or seeks, any" and ``personally or by" for ``by himself or", redesignated former par. (1) as subpar. (A) and substituted ``such

person" for "he" and "Delegate, Delegate Elect" for "Delegate from the District of Columbia, Delegate Elect from the District of Columbia", redesignated former par. (2) as subpar. (B) and substituted "such person" for "he", and in closing provisions substituted "commission; or" for "commission, or".

Subsec. (a)(2). Pub. L. 99-646, Sec. 47(a)(2), redesignated former subsec. (b) as par. (2) and substituted "knowingly gives" for "Whoever, knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly gives" and "employee;" for "employee--".

Subsecs. (b), (c). Pub. L. 99-646, Sec. 47(a)(3), (4), redesignated former subsec. (c) as (b) and substituted "parties--" for "parties", "such employee" for "he", "otherwise; or" for "otherwise, or", and "in which such employee is serving except that paragraph (2) of this subsection" for "in which he is serving: Provided, That clause (2)". Former subsec. (b) redesignated (a)(2).

1970--Subsec. (a)(1). Pub. L. 91-405, Sec. 204(d)(2), included references to Delegate from District of Columbia and Delegate Elect from District of Columbia.

Subsec. (b). Pub. L. 91-405, Sec. 204(d)(3), included reference to Delegate.

Effective Date of 1986 Amendment

Section 47(b) of Pub. L. 99-646 provided that: "The amendments made by this section [amending this section] shall take effect 30 days after the date of enactment of this Act [Nov. 10, 1986]."

Effective Date of 1970 Amendment

Amendment by Pub. L. 91-405 effective Sept. 22, 1970, see section 206(b) of Pub. L. 91-405, set out as an Effective Date note under section 25a of Title 2, The Congress.

Effective Date

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87-849, set out as a note under section 201 of this title.

Delegation of Authority

Authority of President under subsec. (d) of this section to grant exemptions or approvals to individuals delegated to agency heads, see section 401 of Ex. Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended, set out as a note under section 7301 of Title 5, Government Organization and Employees.

Authority of President under subsec. (d) of this section to grant exemptions or approvals for Presidential appointees to committees, commissions, boards, or similar groups established by the President, and for individuals appointed pursuant to sections 105 and 107(a) of Title 3, The President, delegated to Counsel to President, see section 402 of Ex Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended, set out as a note under section 7301 of Title 5.

Exemptions

Section 2 of Pub. L. 87-849 provided in part that: ``All exemptions from the provisions of sections 281, 282, 283, 284, 434, or 1914 of title 18 of the United States Code heretofore created or authorized by statute which are in force on the effective date of this Act [see Effective Date note under section 201 of this title] shall, on and after that date, be deemed to be exemptions from sections 203, 204, 205, 207, 208, or 209, respectively, of title 18 of the United States Code except to the extent that they affect officers or employees of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, as to whom they are no longer applicable."

Private Sector Representatives on United States Delegations to International Telecommunications Meetings and Conferences

Pub. L. 97-241, title I, Sec. 120, Aug. 24, 1982, 96 Stat. 280, provided that:

``(a) Sections 203, 205, 207, and 208 of title 18, United States Code, shall not apply to a private sector representative on the United States delegation to an international telecommunications meeting or conference who is specifically designated to speak on behalf of or otherwise represent the interests of the United States at such meeting or conference with respect to a particular matter, if the Secretary of State (or the Secretary's designee) certifies that no Government employee on the delegation is as well qualified to represent United

States interests with respect to such matter and that such designation serves the national interest. All such representatives shall have on file with the Department of State the financial disclosure report required for special Government employees.

“(b) As used in this section, the term ‘international telecommunications meeting or conference’ means the conferences of the International Telecommunications Union, meetings of its International Consultative Committees for Radio and for Telephone and Telegraph, and such other international telecommunications meetings or conferences as the Secretary of State may designate.”

Section Referred to in Other Sections

This section is referred to in sections 14, 202, 206, 216 of this title; title 5 sections 568, 3374; title 7 section 2009aa-1; title 12 section 2245; title 15 section 4805; title 16 section 459b-7; title 22 sections 3507, 3508, 3613; title 26 section 7802; title 28 section 594; title 30 section 663; title 38 section 5902; title 40 App. section 108; title 42 section 1314; title 50 section 405; title 50 App. section 463.

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[CITE: 18USC204]

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 11--BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Sec. 204. Practice in United States Court of Federal Claims or
the United States Court of Appeals for the Federal Circuit by
Members of Congress

Whoever, being a Member of Congress or Member of Congress Elect,
practices in the United States Court of Federal Claims or the United
States Court of Appeals for the Federal Circuit shall be subject to the
penalties set forth in section 216 of this title.

(Added Pub. L. 87-849, Sec. 1(a), Oct. 23, 1962, 76 Stat. 1122; amended
Pub. L. 91-405, title II, Sec. 204(d)(2), Sept. 22, 1970, 84 Stat. 853;
Pub. L. 97-164, title I, Sec. 147, Apr. 2, 1982, 96 Stat. 45; Pub. L.
101-194, title IV, Sec. 403, Nov. 30, 1989, 103 Stat. 1749; Pub. L. 102-
572, title IX, Sec. 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

Prior Provisions

A prior section 204, act June 25, 1948, ch. 645, 62 Stat. 692,
related to an offer to influence a Member of Congress, prior to the
general amendment of this chapter by Pub. L. 87-849 and is substantially
covered by revised section 201.

Provisions similar to this section were contained in former section
282 of this title prior to the repeal of such section and the general
amendment of this chapter by Pub. L. 87-849.

Amendments

1992--Pub. L. 102-572 substituted ``United States Court of Federal Claims" for ``United States Claims Court" in section catchline and in text.

1989--Pub. L. 101-194 amended section generally. Prior to amendment, section read as follows: ``Whoever, being a Member of Congress, Member of Congress Elect, Delegate from the District of Columbia, Delegate Elect from the District of Columbia, Resident Commissioner, or Resident Commissioner Elect, practices in the United States Claims Court or the United States Court of Appeals for the Federal Circuit, shall be fined not more than \$10,000 or imprisoned for not more than two years, or both, and shall be incapable of holding any office of honor, trust, or profit under the United States."

1982--Pub. L. 97-164 substituted ``United States Claims Court or the United States Court of Appeals for the Federal Circuit" for ``Court of Claims".

1970--Pub. L. 91-405 included references to Delegate from District of Columbia and Delegate Elect from District of Columbia.

Effective Date of 1992 Amendment

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

Effective Date of 1982 Amendment

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

Effective Date of 1970 Amendment

Amendment by Pub. L. 91-405 effective Sept. 22, 1970, see section 206(b) of Pub. L. 91-405, set out as an Effective Date note under section 25a of Title 2, The Congress.

Effective Date

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87-849, set out as a note under section 201 of this title.

Exemptions

Exemptions from former section 282 of this title deemed to be exemptions from this section, see section 2 of Pub. L. 87-849, set out as a note under section 203 of this title.

Section Referred to in Other Sections

This section is referred to in sections 202, 216 of this title; title 5 section 568; title 7 section 2009aa-1; title 28 section 594; title 40 App. section 108.

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TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 11--BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Sec. 205. Activities of officers and employees in claims against
and other matters affecting the Government

(a) Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, other than in the proper discharge of his official duties--

(1) acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim, in consideration of assistance in the prosecution of such claim; or

(2) acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or civil, military, or naval commission in connection with any covered matter in which the United States is a party or has a direct and substantial interest;

shall be subject to the penalties set forth in section 216 of this title.

(b) Whoever, being an officer or employee of the District of Columbia or an officer or employee of the Office of the United States Attorney for the District of Columbia, otherwise than in the proper discharge of official duties--

(1) acts as agent or attorney for prosecuting any claim against the District of Columbia, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim; or

(2) acts as agent or attorney for anyone before any department, agency, court, officer, or commission in connection with any covered

matter in which the District of Columbia is a party or has a direct and substantial interest;

shall be subject to the penalties set forth in section 216 of this title.

(c) A special Government employee shall be subject to subsections (a) and (b) only in relation to a covered matter involving a specific party or parties--

(1) in which he has at any time participated personally and substantially as a Government employee or special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or

(2) which is pending in the department or agency of the Government in which he is serving.

Paragraph (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

(d)(1) Nothing in subsection (a) or (b) prevents an officer or employee, if not inconsistent with the faithful performance of that officer's or employee's duties, from acting without compensation as agent or attorney for, or otherwise representing--

(A) any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings; or

(B) except as provided in paragraph (2), any cooperative, voluntary, professional, recreational, or similar organization or group not established or operated for profit, if a majority of the organization's or groups's \1\ members are current officers or employees of the United States or of the District of Columbia, or their spouses or dependent children.

\1\ So in original. Probably should be ``group's".

(2) Paragraph (1)(B) does not apply with respect to a covered matter that--

(A) is a claim under subsection (a)(1) or (b)(1);

(B) is a judicial or administrative proceeding where the organization or group is a party; or

(C) involves a grant, contract, or other agreement (including a request for any such grant, contract, or agreement) providing for the disbursement of Federal funds to the organization or group.

(e) Nothing in subsection (a) or (b) prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for, or otherwise representing, his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except--

(1) in those matters in which he has participated personally and substantially as a Government employee or special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or

(2) in those matters which are the subject of his official responsibility,

subject to approval by the Government official responsible for appointment to his position.

(f) Nothing in subsection (a) or (b) prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States if the head of the department or agency concerned with the grant or contract certifies in writing that the national interest so requires and publishes such certification in the Federal Register.

(g) Nothing in this section prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

(h) For the purpose of this section, the term ``covered matter" means any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter.

(i) Nothing in this section prevents an employee from acting pursuant to--

(1) chapter 71 of title 5;

(2) section 1004 or chapter 12 of title 39;

(3) section 3 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831b);

(4) chapter 10 of title I of the Foreign Service Act of 1980 (22 U.S.C. 4104 et seq.); or

(5) any provision of any other Federal or District of Columbia law that authorizes labor-management relations between an agency or instrumentality of the United States or the District of Columbia and any labor organization that represents its employees.

(Added Pub. L. 87-849, Sec. 1(a), Oct. 23, 1962, 76 Stat. 1122; amended Pub. L. 101-194, title IV, Sec. 404, Nov. 30, 1989, 103 Stat. 1750; Pub. L. 101-280, Sec. 5(c), May 4, 1990, 104 Stat. 159; Pub. L. 104-177, Sec. 2, Aug. 6, 1996, 110 Stat. 1563.)

References in Text

The Foreign Service Act of 1980, referred to in subsec. (i)(4), is Pub. L. 96-465, Oct. 17, 1980, 94 Stat. 2071, as amended. Chapter 10 of title I of the Act is classified generally to subchapter X (Sec. 4101 et seq.) of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

Prior Provisions

A prior section 205, act June 25, 1948, ch. 645, 62 Stat. 692, related to the acceptance by a Member of Congress of anything of value to influence him, prior to the general amendment of this chapter by Pub. L. 87-849 and is substantially covered by revised section 201.

Provisions similar to those comprising this section were contained in section 283 of this title prior to the repeal of such section and the general amendment of this chapter by Pub. L. 87-849.

Amendments

1996--Subsec. (d). Pub. L. 104-177, Sec. 2(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ``Nothing in subsection (a) or (b) prevents an officer or employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for, or otherwise representing, any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings."''

Subsec. (i). Pub. L. 104-177, Sec. 2(b), added subsec. (i).

1990--Subsec. (a)(2). Pub. L. 101-280, Sec. 5(c)(1), substituted ``civil" for ``any civil"''.

Subsec. (b)(2). Pub. L. 101-280, Sec. 5(c)(2), substituted ``commission" for ``any commission"''.

1989--Pub. L. 101-194 amended section generally, revising and restating as subsecs. (a) to (h) provisions formerly consisting of eight

undesignated pars.

Effective Date

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87-849, set out as a note under section 201 of this title.

Delegation of Authority

Authority of President under subsec. (e) of this section to grant exemptions or approvals to individuals delegated to agency heads, see section 401 of Ex. Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended, set out as a note under section 7301 of Title 5, Government Organization and Employees.

Authority of President under subsec. (e) of this section to grant exemptions or approvals for Presidential appointees to committees, commissions, boards, or similar groups established by the President, and for individuals appointed pursuant to sections 105 and 107(a) of Title 3, The President, delegated to Counsel to President, see section 402 of Ex Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended, set out as a note under section 7301 of Title 5.

Exemptions

Exemptions from former section 283 of this title deemed to be exemptions from this section, see section 2 of Pub. L. 87-849, set out as a note under section 203 of this title.

Section Referred to in Other Sections

This section is referred to in sections 14, 202, 206, 216 of this title; title 5 sections 568, 3374; title 7 section 2009aa-1; title 10 section 942; title 12 section 2245; title 15 section 4805; title 16 section 459b-7; title 22 sections 3507, 3508, 3613; title 25 section 450i; title 26 section 7802; title 28 section 594; title 30 section 663; title 38 section 5902; title 40 App. section 108; title 41 section 120; title 42 sections 1314, 2297h-3; title 50 section 405; title 50 App. section 463.

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TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 11--BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Sec. 206. Exemption of retired officers of the uniformed
services

Sections 203 and 205 of this title shall not apply to a retired officer of the uniformed services of the United States while not on active duty and not otherwise an officer or employee of the United States, or to any person specially excepted by Act of Congress.

(Added Pub. L. 87-849, Sec. 1(a), Oct. 23, 1962, 76 Stat. 1123.)

Prior Provisions

A prior section 206, act June 25, 1948, ch. 645, 62 Stat. 692, related to an offer to a judge or judicial officer to influence him, prior to the general amendment of this chapter by Pub. L. 87-849 and is substantially covered by revised section 201.

Effective Date

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87-849, set out as a note under section 201 of this title.

Section Referred to in Other Sections

This section is referred to in section 202 of this title; title 5 section 568; title 7 section 2009aa-1; title 12 section 2245; title 28

section 594; title 38 section 5902; title 40 App. section 108.

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[CITE: 18USC207]

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 11--BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Sec. 207. Restrictions on former officers, employees, and
elected officials of the executive and legislative branches

(a) Restrictions on All Officers and Employees of the Executive
Branch and Certain Other Agencies.--

(1) Permanent restrictions on representation on particular
matters.--Any person who is an officer or employee (including any
special Government employee) of the executive branch of the United
States (including any independent agency of the United States), or
of the District of Columbia, and who, after the termination of his
or her service or employment with the United States or the District
of Columbia, knowingly makes, with the intent to influence, any
communication to or appearance before any officer or employee of any
department, agency, court, or court-martial of the United States or
the District of Columbia, on behalf of any other person (except the
United States or the District of Columbia) in connection with a
particular matter--

(A) in which the United States or the District of Columbia
is a party or has a direct and substantial interest,

(B) in which the person participated personally and
substantially as such officer or employee, and

(C) which involved a specific party or specific parties at
the time of such participation,

shall be punished as provided in section 216 of this title.

(2) Two-year restrictions concerning particular matters under
official responsibility.--Any person subject to the restrictions
contained in paragraph (1) who, within 2 years after the termination

of his or her service or employment with the United States or the District of Columbia, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia), in connection with a particular matter--

(A) in which the United States or the District of Columbia is a party or has a direct and substantial interest,

(B) which such person knows or reasonably should know was actually pending under his or her official responsibility as such officer or employee within a period of 1 year before the termination of his or her service or employment with the United States or the District of Columbia, and

(C) which involved a specific party or specific parties at the time it was so pending,

shall be punished as provided in section 216 of this title.

(3) Clarification of restrictions.--The restrictions contained in paragraphs (1) and (2) shall apply--

(A) in the case of an officer or employee of the executive branch of the United States (including any independent agency), only with respect to communications to or appearances before any officer or employee of any department, agency, court, or court-martial of the United States on behalf of any other person (except the United States), and only with respect to a matter in which the United States is a party or has a direct and substantial interest; and

(B) in the case of an officer or employee of the District of Columbia, only with respect to communications to or appearances before any officer or employee of any department, agency, or court of the District of Columbia on behalf of any other person (except the District of Columbia), and only with respect to a matter in which the District of Columbia is a party or has a direct and substantial interest.

(b) One-Year Restrictions on Aiding or Advising.--

(1) In general.--Any person who is a former officer or employee of the executive branch of the United States (including any independent agency) and is subject to the restrictions contained in subsection (a)(1), or any person who is a former officer or employee of the legislative branch or a former Member of Congress, who personally and substantially participated in any ongoing trade or

treaty negotiation on behalf of the United States within the 1-year period preceding the date on which his or her service or employment with the United States terminated, and who had access to information concerning such trade or treaty negotiation which is exempt from disclosure under section 552 of title 5, which is so designated by the appropriate department or agency, and which the person knew or should have known was so designated, shall not, on the basis of that information, knowingly represent, aid, or advise any other person (except the United States) concerning such ongoing trade or treaty negotiation for a period of 1 year after his or her service or employment with the United States terminates. Any person who violates this subsection shall be punished as provided in section 216 of this title.

(2) Definition.--For purposes of this paragraph--

(A) the term "trade negotiation" means negotiations which the President determines to undertake to enter into a trade agreement pursuant to section 1102 of the Omnibus Trade and Competitiveness Act of 1988, and does not include any action taken before that determination is made; and

(B) the term "treaty" means an international agreement made by the President that requires the advice and consent of the Senate.

(c) One-Year Restrictions on Certain Senior Personnel of the Executive Branch and Independent Agencies.--

(1) Restrictions.--In addition to the restrictions set forth in subsections (a) and (b), any person who is an officer or employee (including any special Government employee) of the executive branch of the United States (including an independent agency), who is referred to in paragraph (2), and who, within 1 year after the termination of his or her service or employment as such officer or employee, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of the department or agency in which such person served within 1 year before such termination, on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of such department or agency, shall be punished as provided in section 216 of this title.

(2) Persons to whom restrictions apply.--(A) Paragraph (1) shall apply to a person (other than a person subject to the restrictions of subsection (d))--

(i) employed at a rate of pay specified in or fixed

according to subchapter II of chapter 53 of title 5,

(ii) employed in a position which is not referred to in clause (i) and for which the basic rate of pay, exclusive of any locality-based pay adjustment under section 5302 of title 5 (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the rate of basic pay payable for level 5 of the Senior Executive Service,

(iii) appointed by the President to a position under section 105(a)(2)(B) of title 3 or by the Vice President to a position under section 106(a)(1)(B) of title 3, or

(iv) employed in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade (as specified in section 201 of title 37) is pay grade O-7 or above.

(B) Paragraph (1) shall not apply to a special Government employee who serves less than 60 days in the 1-year period before his or her service or employment as such employee terminates.

(C) At the request of a department or agency, the Director of the Office of Government Ethics may waive the restrictions contained in paragraph (1) with respect to any position, or category of positions, referred to in clause (ii) or (iv) of subparagraph (A), in such department or agency if the Director determines that--

(i) the imposition of the restrictions with respect to such position or positions would create an undue hardship on the department or agency in obtaining qualified personnel to fill such position or positions, and

(ii) granting the waiver would not create the potential for use of undue influence or unfair advantage.

(d) Restrictions on Very Senior Personnel of the Executive Branch and Independent Agencies.--

(1) Restrictions.--In addition to the restrictions set forth in subsections (a) and (b), any person who--

(A) serves in the position of Vice President of the United States,

(B) is employed in a position in the executive branch of the United States (including any independent agency) at a rate of pay payable for level I of the Executive Schedule or employed in a position in the Executive Office of the President at a rate of pay payable for level II of the Executive Schedule, or

(C) is appointed by the President to a position under section 105(a)(2)(A) of title 3 or by the Vice President to a

position under section 106(a)(1)(A) of title 3,

and who, within 1 year after the termination of that person's service in that position, knowingly makes, with the intent to influence, any communication to or appearance before any person described in paragraph (2), on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of the executive branch of the United States, shall be punished as provided in section 216 of this title.

(2) Persons who may not be contacted.--The persons referred to in paragraph (1) with respect to appearances or communications by a person in a position described in subparagraph (A), (B), or (C) of paragraph (1) are--

(A) any officer or employee of any department or agency in which such person served in such position within a period of 1 year before such person's service or employment with the United States Government terminated, and

(B) any person appointed to a position in the executive branch which is listed in section 5312, 5313, 5314, 5315, or 5316 of title 5.

(e) Restrictions on Members of Congress and Officers and Employees of the Legislative Branch.--

(1) Members of congress and elected officers.--(A) Any person who is a Member of Congress or an elected officer of either House of Congress and who, within 1 year after that person leaves office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B) or (C), on behalf of any other person (except the United States) in connection with any matter on which such former Member of Congress or elected officer seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former Member of Congress are any Member, officer, or employee of either House of Congress, and any employee of any other legislative office of the Congress.

(C) The persons referred to in subparagraph (A) with respect to appearances or communications by a former elected officer are any Member, officer, or employee of the House of Congress in which the elected officer served.

(2) Personal staff.--(A) Any person who is an employee of a Senator or an employee of a Member of the House of Representatives and who, within 1 year after the termination of that employment, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a person who is a former employee are the following:

- (i) the Senator or Member of the House of Representatives for whom that person was an employee; and
- (ii) any employee of that Senator or Member of the House of Representatives.

(3) Committee staff.--Any person who is an employee of a committee of Congress and who, within 1 year after the termination of that person's employment on such committee, knowingly makes, with the intent to influence, any communication to or appearance before any person who is a Member or an employee of that committee or who was a Member of the committee in the year immediately prior to the termination of such person's employment by the committee, on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(4) Leadership staff.--(A) Any person who is an employee on the leadership staff of the House of Representatives or an employee on the leadership staff of the Senate and who, within 1 year after the termination of that person's employment on such staff, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the

following:

(i) in the case of a former employee on the leadership staff of the House of Representatives, those persons are any Member of the leadership of the House of Representatives and any employee on the leadership staff of the House of Representatives; and

(ii) in the case of a former employee on the leadership staff of the Senate, those persons are any Member of the leadership of the Senate and any employee on the leadership staff of the Senate.

(5) Other legislative offices.--(A) Any person who is an employee of any other legislative office of the Congress and who, within 1 year after the termination of that person's employment in such office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by any officer or employee of such office, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the employees and officers of the former legislative office of the Congress of the former employee.

(6) Limitation on restrictions.--(A) The restrictions contained in paragraphs (2), (3), and (4) apply only to acts by a former employee who, for at least 60 days, in the aggregate, during the 1-year period before that former employee's service as such employee terminated, was paid a rate of basic pay equal to or greater than an amount which is 75 percent of the basic rate of pay payable for a Member of the House of Congress in which such employee was employed.

(B) The restrictions contained in paragraph (5) apply only to acts by a former employee who, for at least 60 days, in the aggregate, during the 1-year period before that former employee's service as such employee terminated, was employed in a position for which the rate of basic pay, exclusive of any locality-based pay adjustment under section 5302 of title 5 (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the basic rate of pay payable for level 5 of the Senior Executive Service.

(7) Definitions.--As used in this subsection--

(A) the term "committee of Congress" includes standing committees, joint committees, and select committees;

(B) a person is an employee of a House of Congress if that person is an employee of the Senate or an employee of the House of Representatives;

(C) the term "employee of the House of Representatives" means an employee of a Member of the House of Representatives, an employee of a committee of the House of Representatives, an employee of a joint committee of the Congress whose pay is disbursed by the Clerk of the House of Representatives, and an employee on the leadership staff of the House of Representatives;

(D) the term "employee of the Senate" means an employee of a Senator, an employee of a committee of the Senate, an employee of a joint committee of the Congress whose pay is disbursed by the Secretary of the Senate, and an employee on the leadership staff of the Senate;

(E) a person is an employee of a Member of the House of Representatives if that person is an employee of a Member of the House of Representatives under the clerk hire allowance;

(F) a person is an employee of a Senator if that person is an employee in a position in the office of a Senator;

(G) the term "employee of any other legislative office of the Congress" means an officer or employee of the Architect of the Capitol, the United States Botanic Garden, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, the Copyright Royalty Tribunal, the United States Capitol Police, and any other agency, entity, or office in the legislative branch not covered by paragraph (1), (2), (3), or (4) of this subsection;

(H) the term "employee on the leadership staff of the House of Representatives" means an employee of the office of a Member of the leadership of the House of Representatives described in subparagraph (L), and any elected minority employee of the House of Representatives;

(I) the term "employee on the leadership staff of the Senate" means an employee of the office of a Member of the leadership of the Senate described in subparagraph (M);

(J) the term "Member of Congress" means a Senator or a Member of the House of Representatives;

(K) the term "Member of the House of Representatives" means a Representative in, or a Delegate or Resident Commissioner to, the Congress;

(L) the term "Member of the leadership of the House of

Representatives" means the Speaker, majority leader, minority leader, majority whip, minority whip, chief deputy majority whip, chief deputy minority whip, chairman of the Democratic Steering Committee, chairman and vice chairman of the Democratic Caucus, chairman, vice chairman, and secretary of the Republican Conference, chairman of the Republican Research Committee, and chairman of the Republican Policy Committee, of the House of Representatives (or any similar position created on or after the effective date set forth in section 102(a) of the Ethics Reform Act of 1989);

(M) the term "Member of the leadership of the Senate" means the Vice President, and the President pro tempore, Deputy President pro tempore, majority leader, minority leader, majority whip, minority whip, chairman and secretary of the Conference of the Majority, chairman and secretary of the Conference of the Minority, chairman and co-chairman of the Majority Policy Committee, and chairman of the Minority Policy Committee, of the Senate (or any similar position created on or after the effective date set forth in section 102(a) of the Ethics Reform Act of 1989).

(f) Restrictions Relating to Foreign Entities.--

(1) Restrictions.--Any person who is subject to the restrictions contained in subsection (c), (d), or (e) and who knowingly, within 1 year after leaving the position, office, or employment referred to in such subsection--

(A) represents a foreign entity before any officer or employee of any department or agency of the United States with the intent to influence a decision of such officer or employee in carrying out his or her official duties, or

(B) aids or advises a foreign entity with the intent to influence a decision of any officer or employee of any department or agency of the United States, in carrying out his or her official duties,

shall be punished as provided in section 216 of this title.

(2) Special rule for trade representative.--With respect to a person who is the United States Trade Representative or Deputy United States Trade Representative, the restrictions described in paragraph (1) shall apply to representing, aiding, or advising foreign entities at any time after the termination of that person's service as the United States Trade Representative.

(3) Definition.--For purposes of this subsection, the term

``foreign entity" means the government of a foreign country as defined in section 1(e) of the Foreign Agents Registration Act of 1938, as amended, or a foreign political party as defined in section 1(f) of that Act.

(g) Special Rules for Detailees.--For purposes of this section, a person who is detailed from one department, agency, or other entity to another department, agency, or other entity shall, during the period such person is detailed, be deemed to be an officer or employee of both departments, agencies, or such entities.

(h) Designations of Separate Statutory Agencies and Bureaus.--

(1) Designations.--For purposes of subsection (c) and except as provided in paragraph (2), whenever the Director of the Office of Government Ethics determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and that there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director shall by rule designate such agency or bureau as a separate department or agency. On an annual basis the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his or her responsibilities under this paragraph.

(2) Inapplicability of designations.--No agency or bureau within the Executive Office of the President may be designated under paragraph (1) as a separate department or agency. No designation under paragraph (1) shall apply to persons referred to in subsection (c)(2)(A)(i) or (iii).

(i) Definitions.--For purposes of this section--

(1) the term ``officer or employee", when used to describe the person to whom a communication is made or before whom an appearance is made, with the intent to influence, shall include--

(A) in subsections (a), (c), and (d), the President and the Vice President; and

(B) in subsection (f), the President, the Vice President, and Members of Congress;

(2) the term ``participated" means an action taken as an

officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action; and

(3) the term "particular matter" includes any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding.

(j) Exceptions.--

(1) Official government duties.--The restrictions contained in this section shall not apply to acts done in carrying out official duties on behalf of the United States or the District of Columbia or as an elected official of a State or local government.

(2) State and local governments and institutions, hospitals, and organizations.--The restrictions contained in subsections (c), (d), and (e) shall not apply to acts done in carrying out official duties as an employee of--

(A) an agency or instrumentality of a State or local government if the appearance, communication, or representation is on behalf of such government, or

(B) an accredited, degree-granting institution of higher education, as defined in section 101 of the Higher Education Act of 1965, or a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1986, if the appearance, communication, or representation is on behalf of such institution, hospital, or organization.

(3) International organizations.--The restrictions contained in this section shall not apply to an appearance or communication on behalf of, or advice or aid to, an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interests of the United States.

(4) Special knowledge.--The restrictions contained in subsections (c), (d), and (e) shall not prevent an individual from making or providing a statement, which is based on the individual's own special knowledge in the particular area that is the subject of the statement, if no compensation is thereby received.

(5) Exception for scientific or technological information.--The restrictions contained in subsections (a), (c), and (d) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information, if

such communications are made under procedures acceptable to the department or agency concerned or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee. For purposes of this paragraph, the term "officer or employee" includes the Vice President.

(6) Exception for testimony.--Nothing in this section shall prevent an individual from giving testimony under oath, or from making statements required to be made under penalty of perjury. Notwithstanding the preceding sentence--

(A) a former officer or employee of the executive branch of the United States (including any independent agency) who is subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the United States) in that matter; and

(B) a former officer or employee of the District of Columbia who is subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the District of Columbia) in that matter.

(7) Political parties and campaign committees.--(A) Except as provided in subparagraph (B), the restrictions contained in subsections (c), (d), and (e) shall not apply to a communication or appearance made solely on behalf of a candidate in his or her capacity as a candidate, an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party.

(B) Subparagraph (A) shall not apply to--

(i) any communication to, or appearance before, the Federal Election Commission by a former officer or employee of the Federal Election Commission; or

(ii) a communication or appearance made by a person who is subject to the restrictions contained in subsections (c), (d), or (e) if, at the time of the communication or appearance, the person is employed by a person or entity other than--

\1\ So in original. Probably should be ``subsection".

(I) a candidate, an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party; or

(II) a person or entity who represents, aids, or advises only persons or entities described in subclause (I).

(C) For purposes of this paragraph--

(i) the term ``candidate" means any person who seeks nomination for election, or election, to Federal or State office or who has authorized others to explore on his or her behalf the possibility of seeking nomination for election, or election, to Federal or State office;

(ii) the term ``authorized committee" means any political committee designated in writing by a candidate as authorized to receive contributions or make expenditures to promote the nomination for election, or the election, of such candidate, or to explore the possibility of seeking nomination for election, or the election, of such candidate, except that a political committee that receives contributions or makes expenditures to promote more than 1 candidate may not be designated as an authorized committee for purposes of subparagraph (A);

(iii) the term ``national committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level;

(iv) the term ``national Federal campaign committee" means an organization that, by virtue of the bylaws of a political party, is established primarily for the purpose of providing assistance, at the national level, to candidates nominated by that party for election to the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(v) the term ``State committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level;

(vi) the term ``political party" means an association, committee, or organization that nominates a candidate for election to any Federal or State elected office whose name appears on the election ballot as the candidate of such association, committee, or organization; and

(vii) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(k)(1)(A) The President may grant a waiver of a restriction imposed by this section to any officer or employee described in paragraph (2) if the President determines and certifies in writing that it is in the public interest to grant the waiver and that the services of the officer or employee are critically needed for the benefit of the Federal Government. Not more than 25 officers and employees currently employed by the Federal Government at any one time may have been granted waivers under this paragraph.

(B)(i) A waiver granted under this paragraph to any person shall apply only with respect to activities engaged in by that person after that person's Federal Government employment is terminated and only to that person's employment at a Government-owned, contractor operated entity with which the person served as an officer or employee immediately before the person's Federal Government employment began.

(ii) Notwithstanding clause (i), a waiver granted under this paragraph to any person who was an officer or employee of Lawrence Livermore National Laboratory, Los Alamos National Laboratory, or Sandia National Laboratory immediately before the person's Federal Government employment began shall apply to that person's employment by any such national laboratory after the person's employment by the Federal Government is terminated.

(2) Waivers under paragraph (1) may be granted only to civilian officers and employees of the executive branch, other than officers and employees in the Executive Office of the President.

(3) A certification under paragraph (1) shall take effect upon its publication in the Federal Register and shall identify--

(A) the officer or employee covered by the waiver by name and by position, and

(B) the reasons for granting the waiver.

A copy of the certification shall also be provided to the Director of the Office of Government Ethics.

(4) The President may not delegate the authority provided by this subsection.

(5)(A) Each person granted a waiver under this subsection shall prepare reports, in accordance with subparagraph (B), stating whether the person has engaged in activities otherwise prohibited by this section for each six-month period described in subparagraph (B), and if so, what those activities were.

(B) A report under subparagraph (A) shall cover each six-month period beginning on the date of the termination of the person's Federal Government employment (with respect to which the waiver under this subsection was granted) and ending two years after that date. Such report shall be filed with the President and the Director of the Office of Government Ethics not later than 60 days after the end of the six-month period covered by the report. All reports filed with the Director under this paragraph shall be made available for public inspection and copying.

(C) If a person fails to file any report in accordance with subparagraphs (A) and (B), the President shall revoke the waiver and shall notify the person of the revocation. The revocation shall take effect upon the person's receipt of the notification and shall remain in effect until the report is filed.

(D) Any person who is granted a waiver under this subsection shall be ineligible for appointment in the civil service unless all reports required of such person by subparagraphs (A) and (B) have been filed.

(E) As used in this subsection, the term "civil service" has the meaning given that term in section 2101 of title 5.

(Added Pub. L. 87-849, Sec. 1(a), Oct. 23, 1962, 76 Stat. 1123; amended Pub. L. 95-521, title V, Sec. 501(a), Oct. 26, 1978, 92 Stat. 1864; Pub. L. 96-28, June 22, 1979, 93 Stat. 76; Pub. L. 101-189, div. A, title VIII, Sec. 814(d)(2), Nov. 29, 1989, 103 Stat. 1499; Pub. L. 101-194, title I, Sec. 101(a), Nov. 30, 1989, 103 Stat. 1716; Pub. L. 101-280, Secs. 2(a), 5(d), May 4, 1990, 104 Stat. 149, 159; Pub. L. 101-509, title V, Sec. 529 [title I, Sec. 101(b)(8)(A)], Nov. 5, 1990, 104 Stat. 1427, 1440; Pub. L. 102-25, title VII, Sec. 705(a), Apr. 6, 1991, 105 Stat. 120; Pub. L. 102-190, div. C, title XXXI, Sec. 3138(a), Dec. 5, 1991, 105 Stat. 1579; Pub. L. 102-395, title VI, Sec. 609(a), Oct. 6, 1992, 106 Stat. 1873; Pub. L. 103-322, title XXXIII, Secs. 330002(i), 330010(15), Sept. 13, 1994, 108 Stat. 2140, 2144; Pub. L. 104-65, Sec. 21(a), Dec. 19, 1995, 109 Stat. 704; Pub. L. 104-179, Secs. 5, 6, Aug. 6, 1996, 110 Stat. 1567, 1568; Pub. L. 104-208, div. A, title I, Sec. 101(f) [title VI, Sec. 635], Sept. 30, 1996, 110 Stat. 3009-314, 3009-363; Pub. L. 105-244, title I, Sec. 102(a)(5), Oct. 7, 1998, 112 Stat. 1618.)

References in Text

Section 1102 of the Omnibus Trade and Competitiveness Act of 1988, referred to in subsec. (b)(2)(A), is classified to section 2902 of Title 19, Customs Duties.

Senior Executive Service, referred to in subsecs. (c)(2)(A)(ii) and (e)(6)(B), see section 5382 of Title 5, Government Organization and Employees.

Levels I and II of the Executive Schedule, referred to in subsec. (d)(1)(B), are set out in sections 5312 and 5313, respectively, of Title 5.

Section 102(a) of the Ethics Reform Act of 1989, referred to in subsec. (e)(7)(L), (M), is section 102(a) of Pub. L. 101-194, which is set out below.

Section 1(e) and (f) of the Foreign Agents Registration Act of 1938, referred to in subsec. (f)(3), is classified to section 611(e) and (f) of Title 22, Foreign Relations and Intercourse.

Section 101 of the Higher Education Act of 1965, referred to in subsec. (j)(2)(B), is classified to section 1001 of Title 20, Education.

Section 501(c)(3) of the Internal Revenue Code of 1986, referred to in subsec. (j)(2)(B), is classified to section 501(c)(3) of Title 26, Internal Revenue Code.

Codification

Another section 501(a) of Pub. L. 95-521, as added by Pub. L. 101-194, title VI, Sec. 601(a), Nov. 30, 1989, 103 Stat. 1760, is set out in the Appendix to Title 5, Government Organization and Employees.

Prior Provisions

A prior section 207, act June 25, 1948, ch. 645, 62 Stat. 692, related to the acceptance of a bribe by a judge, prior to the general amendment of this chapter by Pub. L. 87-849 and is substantially covered by revised section 201.

Provisions similar to those comprising this section were contained in section 284 of this title prior to the repeal of such section and the general amendment of this chapter by Pub. L. 87-849.

Amendments

1998--Subsec. (j)(2)(B). Pub. L. 105-244 substituted ``section 101" for ``section 1201(a)".

1996--Subsec. (c)(2)(A)(ii). Pub. L. 104-179, Sec. 6, substituted ``level 5 of the Senior Executive Service," for ``level V of the Executive Schedule,".

Subsec. (e)(6)(B). Pub. L. 104-208 substituted ``level 5 of the Senior Executive Service" for ``level V of the Executive Schedule".

Subsec. (j). Pub. L. 104-179, Sec. 5, added par. (7).

1995--Subsec. (f)(2). Pub. L. 104-65 inserted ``or Deputy United States Trade Representative" after ``is the United States Trade Representative" and substituted ``at any time" for ``within 3 years".

1994--Subsec. (a)(3). Pub. L. 103-322, Sec. 330010(15), substituted ``restrictions" for ``Restrictions" in heading.

Subsec. (c)(2)(A)(ii). Pub. L. 103-322, Sec. 330002(i), substituted a comma for semicolon at end.

1992--Subsec. (f)(2), (3). Pub. L. 102-395 added par. (2) and redesignated former par. (2) as (3).

1991--Subsec. (k). Pub. L. 102-25 reinstated subsec. (k) as originally enacted by Pub. L. 101-189. See 1989 Amendment note and Effective Date of 1991 Amendments note below.

Subsec. (k)(1)(B). Pub. L. 102-190 designated existing provisions as cl. (i) and added cl. (ii).

1990--Subsec. (a)(1). Pub. L. 101-280, Sec. 2(a)(1), amended subsec. (a)(1), as amended by Pub. L. 101-194, by inserting ``(including any special Government employee)" after ``who is an officer or employee", striking out ``Government" after ``executive branch of the United States", ``and any special Government employee" after ``independent agency of the United States", ``Government" after ``employment with the United States", ``as the case may be," before ``knowingly makes" and before ``on behalf of", inserting ``or the District of Columbia" after ``(except the United States", and in subpar. (A) inserting ``or the District of Columbia" after ``United States".

Subsec. (a)(2). Pub. L. 101-280, Sec. 2(a), amended subsec. (a)(2), as amended by Pub. L. 101-194, by substituting ``or the District of Columbia, knowingly" for ``Government, knowingly" and ``(except the United States or the District of Columbia)" for ``(except the United States)", in subpar. (A) inserting ``or the District of Columbia" after ``United States)", and in subpar. (B) striking out ``Government" after ``United States".

Subsec. (a)(3). Pub. L. 101-280, Sec. 2(a)(3), amended subsec. (a), as amended by Pub. L. 101-194, by adding par. (3).

Subsec. (b)(1). Pub. L. 101-280, Sec. 2(a)(4), amended subsec. (b)(1), as amended by Pub. L. 101-194, by substituting ``a former officer or employee of the executive branch of the United States (including any independent agency) and is" for ``a former officer or employee", substituting ``or any person who is a former officer or employee of the legislative branch or a former Member of Congress" for ``and any person described in subsection (e)(7)", substituting ``which

is so designated by the appropriate department or agency, and which the person knew or should have known was so designated, shall not, on the basis of that information, knowingly represent" for ``and which is so designated by the appropriate department or agency, shall not, on the basis of that information, which the person knew or should have known was so designated, knowingly represent", inserting ``a period of" before ``1 year", and striking out ``Government" before ``terminates".

Subsec. (c). Pub. L. 101-280, Sec. 5(d), substituted ``shall be subject to the penalties set forth in section 216 of this title" for ``shall be fined not more than \$10,000 or imprisoned for not more than two years, or both" in concluding provisions of subsec. (c) as in effect on May 4, 1990.

Subsec. (c)(1). Pub. L. 101-280, Sec. 2(a)(5)(A), amended subsec. (c)(1), as amended by Pub. L. 101-194, by substituting ``(including any special Government employee) of the executive branch of the United States" for ``of the executive branch".

Subsec. (c)(2)(A)(i). Pub. L. 101-280, Sec. 2(a)(5)(B)(i), amended subsec. (c)(2)(A)(i), as amended by Pub. L. 101-194, by inserting ``specified in or" after ``employed at a rate of pay" and striking out ``or a comparable or greater rate of pay under other authority," after ``chapter 53 of title 5,".

Subsec. (c)(2)(A)(ii). Pub. L. 101-509, Sec. 529 [title I, Sec. 101(b)(8)(A)(i)], added cl. (ii) and struck out former cl. (ii) which read as follows: ``employed in a position which is not referred to in clause (i) and for which the rate of basic pay is equal to or greater than the rate of basic pay payable for GS-17 of the General Schedule,".

Pub. L. 101-280, Sec. 2(a)(5)(B)(ii), amended subsec. (a)(2)(A)(ii), as amended by Pub. L. 101-194, by substituting ``rate of basic" for ``basic rate of" wherever appearing.

Subsec. (c)(2)(C), (D). Pub. L. 101-280, Sec. 2(a)(5)(B)(iii), amended subsec. (c)(2)(C), (D), as amended by Pub. L. 101-194, by redesignating subpar. (D) as (C) and striking out former subpar. (C) which read as follows: ``Subparagraph (A)(ii) includes persons employed in the Senior Executive Service at the basic rate of pay specified in that subparagraph."

Subsec. (d)(1)(B). Pub. L. 101-280, Sec. 2(a)(6)(A), amended subsec. (d)(1)(B), as amended by Pub. L. 101-194, by substituting ``in the executive branch of the United States (including any independent agency)" for ``paid".

Subsec. (d)(2). Pub. L. 101-280, Sec. 2(a)(6)(B), amended subsec. (d)(2), as amended by Pub. L. 101-194, by substituting ``Persons who may not be contacted" for ``Entities to which restrictions apply" in

heading, and striking out ``other" after ``any" in subpar. (B).

Subsec. (e)(6). Pub. L. 101-509, Sec. 529 [title I, Sec. 101(b)(8)(A)(ii)], added par. (6) and struck out former par. (6) which read as follows: ``The restrictions contained in paragraphs (2), (3), (4), and (5) apply only to acts by a former employee who, for at least 60 days, in the aggregate, during the 1-year period before that former employee's service as such employee terminated, was paid for such service at a rate of basic pay equal to or greater than the rate of basic pay payable for GS-17 of the General Schedule under section 5332 of title 5."

Pub. L. 101-280, Sec. 2(a)(7)(A), amended subsec. (e)(6), as amended by Pub. L. 101-194, by substituting ``rate of basic" for ``basic rate of" wherever appearing.

Subsec. (e)(7)(L), (M). Pub. L. 101-280, Sec. 2(a)(7)(B), amended subsec. (e)(7)(L), (M), as amended by Pub. L. 101-194, by inserting ``on or" before ``after the effective date".

Subsec. (f)(1). Pub. L. 101-280, Sec. 2(a)(8)(A), amended subsec. (f)(1), as amended by Pub. L. 101-194, by substituting ``such subsection" for ``subsection (c), (d), or (e), as the case may be".

Subsec. (f)(1)(A). Pub. L. 101-280, Sec. 2(a)(8)(B), amended subsec. (f)(1)(A), as amended by Pub. L. 101-194, by striking out ``the interests of" after ``represents" and ``of the Government" after ``department or agency".

Subsec. (f)(1)(B). Pub. L. 101-280, Sec. 2(a)(8)(C), amended subsec. (f)(1)(B), as amended by Pub. L. 101-194, by striking out ``of the Government" after ``department or agency".

Subsec. (i)(1). Pub. L. 101-280, Sec. 2(a)(9), amended subsec. (i)(1), as amended by Pub. L. 101-194, by adding par. (1) and striking out former par. (1) which read as follows: ``the term `intent to influence' means the intent to affect any official action by a Government entity of the United States through any officer or employee of the United States, including Members of Congress;".

Subsec. (j)(1). Pub. L. 101-280, Sec. 2(a)(10)(A), amended subsec. (j)(1), as amended by Pub. L. 101-194, by substituting ``this section" for ``subsections (a), (c), (d), and (e)", ``on behalf of" for ``as an officer or employee of", and ``or the District of Columbia" for ``Government".

Subsec. (j)(3). Pub. L. 101-280, Sec. 2(a)(10)(B), amended subsec. (j)(3), as amended by Pub. L. 101-194, by substituting ``this section" for ``subsections (c), (d), and (e)" and ``in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interests of the United States" for ``of which the United States is a member".

Subsec. (j)(4). Pub. L. 101-280, Sec. 2(a)(10)(C), amended subsec. (j)(4), as amended by Pub. L. 101-194, by substituting ``Special" for ``Personal matters and special" in heading, substituting ``prevent an individual" for ``apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibitions of those subsections prevent a former officer or employee", substituting ``individual's" for ``former officer's or employee's", and striking out ``, other than that regularly provided for by law or regulation for witnesses" after ``if no compensation is thereby received".

Subsec. (j)(5). Pub. L. 101-280, Sec. 2(a)(10)(D), amended subsec. (j)(5), as amended by Pub. L. 101-194, by substituting ``and (d)" for ``(d), and (e)" and inserting ``For purposes of this paragraph, the term `officer or employee' includes the Vice President."

Subsec. (j)(6). Pub. L. 101-280, Sec. 2(a)(10)(E)(ii), amended subsec. (j)(6), as amended by Pub. L. 101-194, by substituting ``sentence--" for ``sentence, a former officer or employee subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the United States) in that matter." and adding subpars. (A) and (B).

Pub. L. 101-280, Sec. 2(a)(10)(E)(i), amended subsec. (j)(6), as amended by Pub. L. 101-194, by substituting ``an individual" for ``a former Member of Congress or officer or employee of the executive or legislative branch or an independent agency (including the Vice President and any special Government employee)".

1989--Pub. L. 101-194 amended section generally, substituting ``Restrictions on former officers, employees, and elected officials of the executive and legislative branches" for ``Disqualification of former officers and employees; disqualification of partners of current officers and employees" as section catchline and making extensive changes in content and structure of text. For text of section as it existed prior to the general amendment by Pub. L. 101-194, see Effective Date of 1989 Amendment; Effect on Employment note set out below.

Subsec. (k). Pub. L. 101-189 added subsec. (k).

1979--Subsec. (b). Pub. L. 96-28, Sec. 1, substituted ``by personal presence at any formal or informal appearance" for ``concerning any formal or informal appearance" in cl. (ii) of provisions before par. (1), and, in par. (3), inserted ``as to (i)," before ``which was actually pending" and ``, as to (ii)," before ``in which he participated".

Subsec. (d). Pub. L. 96-28, Sec. 2, designated existing provisions

as par. (1), designated existing pars. (1) and (3) as subpars. (A) and (B) of par. (1) as so designated, and added subpar. (C) of par. (1) and par. (2), incorporating into the new par. and subpar. portions of former provisions relating to positions for which the basic rate of pay was equal to or greater than the basic rate of pay for GS-17 of the General Schedule prescribed by section 5332 of Title 5 and who had significant decision-making or supervisory responsibility, as designated by the Director of the Office of Government Ethics, in consultation with the head of the department or agency concerned, and provisions relating to the designation of positions by the Director of the Office of Government Ethics.

1978--Pub. L. 95-521 expanded section to include provisions designed to more effectively deal with the problem of the disproportionate influence former officers and employees might have upon the government processes and decision-making in their previous departments or agencies when they return in the role of representatives or advocates of nongovernmental groups or interests before those same departments or agencies.

Effective Date of 1998 Amendment

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

Effective Date of 1995 Amendment

Section 21(c) of Pub. L. 104-65 provided that: ``The amendments made by this section [amending this section and section 2171 of Title 19, Customs Duties] shall apply with respect to an individual appointed as United States Trade Representative or as a Deputy United States Trade Representative on or after the date of enactment of this Act [Dec. 19, 1995]."

Effective Date of 1992 Amendment

Section 609(b) of Pub. L. 102-395 provided that: ``This section [amending this section] shall not apply to the person serving as the United States Trade Representative at the date of enactment of this Act [Oct. 6, 1992]."

Effective Date of 1991 Amendments

Section 3138(b) of Pub. L. 102-190 provided that: ``The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 5, 1991] and shall apply to persons granted waivers under section 207(k)(1) of title 18, United States Code, on or after that date."

Section 705(a) of Pub. L. 102-25 provided that subsec. (k), added by Pub. L. 101-189 and omitted in the general amendment of this section by Pub. L. 101-194, is reinstated as originally enacted, effective as of Jan. 1, 1991.

Effective Date of 1990 Amendments

Section 529 [title I, Sec. 101(b)(8)(B)] of Pub. L. 101-509 provided that: ``The amendments made by subparagraph (A) [amending this section] take effect on January 1, 1991."

Amendment by Pub. L. 101-280 effective May 4, 1990, see section 11 of Pub. L. 101-280, set out as a note under section 101 of Pub. L. 95-521 in the Appendix to Title 5, Government Organization and Employees.

Effective Date of 1989 Amendment; Effect on Employment

Section 102 of Pub. L. 101-194, as amended by Pub. L. 101-280, Sec. 2(b), May 4, 1990, 104 Stat. 152, provided that:

``(a) In General.--(1) Subject to paragraph (2) and to subsection (b), the amendments made by section 101 [amending this section] take effect on January 1, 1991.

``(2) Subject to subsection (b), the amendments made by section 101 take effect at noon on January 3, 1991, with respect to Members of Congress (within the meaning of section 207 of title 18, United States Code).

``(b) Effect on Employment.--(1) The amendments made by section 101 apply only to persons whose service as a Member of Congress, the Vice President, or an officer or employee to which such amendments apply terminates on or after the effective date of such amendments.

``(2) With respect to service as an officer or employee which terminates before the effective date set forth in subsection (a), section 207 of title 18, United States Code, as in effect at the time of

the termination of such service, shall continue to apply, on and after such effective date, with respect to such service."

Prior to the effective date of the amendment by Pub. L. 101-194, section 207 read as follows:

``Sec. 207. Disqualification of former officers and employees;

disqualification of partners of current officers and employees

``(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to--

``(1) any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

``(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

``(3) in which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed; or

``(b) Whoever, (i) having been so employed, within two years after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to, or (ii) having been so employed and as specified in subsection (d) of this section, within two years after his employment has ceased, knowingly represents or aids, counsels, advises, consults, or assists in representing any other person (except the United States) by personal presence at any formal or informal appearance before--

``(1) any department, agency, court, court-martial, or any civil, military or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

``(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract,

claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

``(3) as to (i), which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility, or, as to (ii), in which he participated personally and substantially as an officer or employee; or

``(c) Whoever, other than a special Government employee who serves for less than sixty days in a given calendar year, having been so employed as specified in subsection (d) of this section, within one year after such employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of anyone other than the United States, to--

``(1) the department or agency in which he served as an officer or employee, or any officer or employee thereof, and

``(2) in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, and

``(3) which is pending before such department or agency or in which such department or agency has a direct and substantial interest--

shall be subject to the penalties set forth in section 216 of this title.

``(d)(1) Subsection (c) of this section shall apply to a person employed--

``(A) at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5, United States Code, or a comparable or greater rate of pay under other authority;

``(B) on active duty as a commissioned officer of a uniformed service assigned to pay grade of O-9 or above as described in section 201 of title 37, United States Code; or

``(C) in a position which involves significant decision-making or supervisory responsibility, as designated under this subparagraph by the Director of the Office of Government Ethics, in consultation with the department or agency concerned. Only positions which are not covered by subparagraphs (A) and (B) above, and for which the basic rate of pay is equal to or greater than the basic rate of pay for GS-17 of the General Schedule prescribed by section 5332 of

title 5, United States Code, or positions which are established within the Senior Executive Service pursuant to the Civil Service Reform Act of 1978, or positions of active duty commissioned officers of the uniformed services assigned to pay O-7 or O-8, as described in section 201 of title 37, United States Code, may be designated. As to persons in positions designated under this subparagraph, the Director may limit the restrictions of subsection (c) to permit a former officer or employee, who served in a separate agency or bureau within a department or agency, to make appearances before or communications to persons in an unrelated agency or bureau, within the same department or agency, having separate and distinct subject matter jurisdiction, upon a determination by the Director that there exists no potential for use of undue influence or unfair advantage based on past government service. On an annual basis, the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his responsibilities under this paragraph.

“(2) The prohibition of subsection (c) shall not apply to appearances, communications, or representation by a former officer or employee, who is--

“(A) an elected official of a State or local government, or

“(B) whose principal occupation or employment is with (i) an agency or instrumentality of a State or local government, (ii) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or (iii) a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1986, and the appearance, communication, or representation is on behalf of such government, institution, hospital, or organization.

“(e) For the purposes of subsection (c), whenever the Director of the Office of Government Ethics determines that a separate statutory agency or bureau within a department or agency exercises functions which are distinct and separate from the remaining functions of the department or agency, the Director shall by rule designate such agency or bureau as a separate department or agency; except that such designation shall not apply to former heads of designated bureaus or agencies, or former officers and employees of the department or agency whose official responsibilities included supervision of said agency or bureau.

“(f) The prohibitions of subsections (a), (b), and (c) shall not

apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information under procedures acceptable to the department or agency concerned, or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee.

“(g) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States before any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which such officer or employee or special Government employee participates or has participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his official responsibility, shall be fined not more than \$5,000, or imprisoned for not more than one year, or both.

“(h) Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury.

“(i) The prohibition contained in subsection (c) shall not apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibition of that subsection prevent a former officer or employee from making or providing a statement, which is based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses.

“(j) If the head of the department or agency in which the former officer or employee served finds, after notice and opportunity for a

hearing, that such former officer or employee violated subsection (a), (b), or (c) of this section, such department or agency head may prohibit that person from making, on behalf of any other person (except the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, such department or agency on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action. Such disciplinary action shall be subject to review in an appropriate United States district court. No later than six months after the effective date of this Act, departments and agencies shall, in consultation with the Director of the Office of Government Ethics, establish procedures to carry out this subsection.

“(k)(1)(A) The President may grant a waiver of a restriction imposed by this section to any officer or employee described in paragraph (2) if the President determines and certifies in writing that it is in the public interest to grant the waiver and that the services of the officer or employee are critically needed for the benefit of the Federal Government. Not more than 25 officers and employees currently employed by the Federal Government at any one time may have been granted waivers under this paragraph.

“(B) A waiver granted under this paragraph to any person shall apply only with respect to activities engaged in by that person after that person's Federal Government employment is terminated and only to that person's employment at a Government-owned, contractor operated entity with which the person served as an officer or employee immediately before the person's Federal Government employment began.

“(2) Waivers under paragraph (1) may be granted only to civilian officers and employees of the executive branch, other than officers and employees in the Executive Office of the President.

“(3) A certification under paragraph (1) shall take effect upon its publication in the Federal Register and shall identify--

“(A) the officer or employee covered by the waiver by name and by position, and

“(B) the reasons for granting the waiver.

A copy of the certification shall also be provided to the Director of the Office of Government Ethics.

“(4) The President may not delegate the authority provided by this subsection.

“(5)(A) Each person granted a waiver under this subsection shall prepare reports, in accordance with subparagraph (B), stating whether the person has engaged in activities otherwise prohibited by this section for each six-month period described in subparagraph (B), and if so, what those activities were.

“(B) A report under subparagraph (A) shall cover each six-month period beginning on the date of the termination of the person's Federal Government employment (with respect to which the waiver under this subsection was granted) and ending two years after that date. Such report shall be filed with the President and the Director of the Office of Government Ethics not later than 60 days after the end of the six-month period covered by the report. All reports filed with the Director under this paragraph shall be made available for public inspection and copying.

“(C) If a person fails to file any report in accordance with subparagraphs (A) and (B), the President shall revoke the waiver and shall notify the person of the revocation. The revocation shall take effect upon the person's receipt of the notification and shall remain in effect until the report is filed.

“(D) Any person who is granted a waiver under this subsection shall be ineligible for appointment in the civil service unless all reports required of such person by subparagraphs (A) and (B) have been filed.

“(E) As used in this subsection, the term ‘civil service’ has the meaning given that term in section 2101 of title 5.”

Effective Date of 1978 Amendment

Section 503 of Pub. L. 95-521, which provided that the amendments made by section 501 (amending this section) shall become effective on July 1, 1979, was amended generally by Pub. L. 101-194, title VI, Sec. 601(a), Nov. 30, 1989, 103 Stat. 1761, and is now set out in the Appendix to Title 5, Government Organization and Employees.

Section 502 of Pub. L. 95-521, which provided that the amendments made by section 501 (amending this section) shall not apply to those individuals who left Government service prior to the effective date of such amendments (July 1, 1979) or, in the case of individuals who occupied positions designated pursuant to section 207(d) of title 18, United States Code, prior to the effective date of such designation; except that any such individual who returns to Government service on or after the effective date of such amendments or designation shall be thereafter covered by such amendments or designation, was amended generally by Pub. L. 101-194, title VI, Sec. 601(a), Nov. 30, 1989, 103 Stat. 1761, and is now set out in the Appendix to Title 5.

Effective Date

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87-849, set out as a note under section 201 of this title.

Regulations

Responsibility of Office of Government Ethics for promulgating regulations and interpreting this section, see section 201(c) of Ex. Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended, set out as a note under section 7301 of Title 5, Government Organization and Employees.

Transfer of Functions

Certain functions of Clerk of House of Representatives transferred to Director of Non-legislative and Financial Services by section 7 of House Resolution No. 423, One Hundred Second Congress, Apr. 9, 1992. Director of Non-legislative and Financial Services replaced by Chief Administrative Officer of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

Agencies Within Executive Office of President

For provisions relating to treatment of agencies within the Executive Office of the President as one agency under subsec. (c) of this section, see Ex. Ord. No. 12674, Sec. 202, Apr. 12, 1989, 54 F.R. 15160, as amended, set out as a note under section 7301 of Title 5, Government Organization and Employees.

Exemptions

Exemptions from former section 284 of this title deemed to be exemptions from this section, see section 2 of Pub. L. 87-849, set out as a note under section 203 of this title.

Section Referred to in Other Sections

This section is referred to in sections 14, 202, 216 of this title; title 5 sections 568, 3374; title 7 section 2009aa-1; title 10 section 9447; title 12 section 2245; title 16 section 459b-7; title 19 section 2171; title 20 section 1018; title 22 sections 3310, 3507, 3508, 3613,

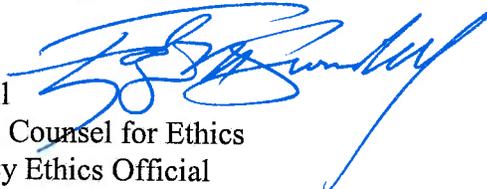
3622; title 25 section 450i; title 26 section 7802; title 28 section 594; title 30 section 663; title 35 section 3; title 38 section 5902; title 40 App. section 108; title 42 sections 1396a, 2297h-3; title 48 section 1907; title 49 section 106; title 50 section 405; title 50 App. section 463.



June 23, 2006

MEMORANDUM

TO: Deputy Ethics Counselors
Ethics Contacts

FROM: Edgar M. Swindell 
Associate General Counsel for Ethics
Designated Agency Ethics Official

SUBJECT: 2006 Annual Ethics Training for Special Government Employees

This memorandum launches the Department's annual training program for special Government employees (SGEs) for 2006. As you are aware, SGEs are among the categories of employees required to receive annual training on ethics rules.

For 2006, you must ensure that all SGEs receive the document "Ethics Rules for Advisory Committee Members and Other Individuals Appointed as Special Government Employees," an 11-page summary produced by the Ethics Division which can be downloaded from <http://intranet.hhs.gov/ogc/hhsethics/SGETRAININGOCT2004.pdf>. Please ensure that advisory committee members also receive "Overview of the Ethics Rules for Special Government Employees Serving on Advisory Committees," a brochure produced by the Ethics Division which can be downloaded from <http://intranet.hhs.gov/ogc/hhsethics/SGE3.pdf>. Sufficient official duty time must be provided for the SGEs to review these materials.

For 2006, it is required that SGEs serving for more than 60 days in the calendar year receive "verbal training," which means that the training is presented by a qualified instructor or prepared by a qualified instructor and presented by telecommunications, computer, audiotape or videotape. If you have employees who fit into this category, please contact Naomi Miske of my staff. For SGEs expected to serve less than 60 days this calendar year, furnishing the written materials listed above will be sufficient.

Content changes or substitutions: DECs may provide additional ethics-related materials to supplement the material developed by the Ethics Division or choose to create their own unique ethics training. However, it is required that clearance be obtained from my office prior to conducting training with your own materials or with our materials if you have added to or altered them in any way.

Page 2 - Deputy Ethics Counselors and Ethics Contacts

In addition, it is required on a yearly basis that the following information is made accessible to **all** required participants of annual ethics training:

- (1) The Principles of Ethical Conduct for Government Officers and Employees, listed in Executive Order 12731 (October 17, 1990), which can be found at http://www.usoge.gov/pages/laws_regs_fedreg_stats/lrfs_files/xeorders/eo12731.html;
- (2) The Standards of Ethical Conduct for Employees of the Executive Branch, which can be found at http://www.usoge.gov/pages/laws_regs_fedreg_stats/oge_regs/5cfr2635.html;
- (3) The Supplemental Standards of Ethical Conduct and Financial Disclosure Requirements for Employees of the Department of Health and Human Services, and
- (4) The Federal conflict of interest statutes, which can both be found at <http://intranet.hhs.gov/ogc/hhsethics/topics/regs.htm>; and
- (5) The names, titles, and office addresses and telephone numbers of the HHS Designated Agency Ethics Official and other agency ethics officials available to advise the employees on ethics issues, which can be found at <http://intranet.hhs.gov/ogc/hhsethics/contacts.htm>.

The Department takes very seriously its obligation to ensure that its advisory committee members and other SGEs are free from any violation of the Federal conflict of interest statutes and regulations. SGE training is an important component of our ethics program. Please provide copies of this memorandum to the Designated Federal Officials assigned to the advisory committees within your respective operating and staff divisions. In addition, please ensure that SGEs serving in other capacities are informed of the annual training requirements.

If you have any questions or need additional information about ethics training requirements, please contact Naomi Miske of my staff at (202) 260-1809.

Attachment

cc: General Counsel
Deputy General Counsels
Associate General Counsels
Chief Counsels, Regions I-X



HHS Office of the General Counsel, Ethics Division

Conflict of Interest Statutes and Regulations

HHS Regulations

- SYNOPSIS OF THE
SUPPLEMENTAL
STANDARDS OF
ETHICAL
CONDUCT [[PDF](#) -
77KB]
- 5 CFR Parts 5501
and 5502 Unofficial
Compilation.
HHS Supplemental
Standards of Ethical
Conduct [[PDF](#) -
153KB]
- Interim Rule -
February 3, 2005 -

Amendments to 5

CFR Part 5501 and

New Part 5502 -

Federal Register

Version [[PDF](#) -

150KB]

- Final Rule - August

31, 2005 -

Amendments to 5

CFR Part 5501 and

Part 5502 - Federal

Register Version

[[PDF](#) - 116KB]

- [45 CFR § 73.735.](#)

[HHS Residual](#)

[Standards of Conduct](#)

The following statutes and regulations are found on the Office of Government Ethics web site. To return to this page, use the "Back" button on your browser.

Statutes (links to OGE web site)

- [18 USC § 201.](#)
[Bribery of public officials and witnesses](#)
- [18 USC § 202.](#)
[Definitions](#)
- [18 USC § 203.](#)
[Compensation to Congress, officers, and others matters affecting the Government](#)
- [18 USC § 204.](#)
[Practice in US Courts by Members of Congress](#)
- [18 USC § 205.](#)
[Activities of employees in claims against Government \(representation\)](#)
- [18 USC § 206.](#)
[Exemption of retired officers of the uniformed services](#)
- [18 USC § 207.](#)
[Restrictions on former employees](#)

[\(Post-employment\)](#)

- [18 USC § 208. Acts affecting a personal financial interest \(conflict of interest\)](#)
- [18 USC § 209. Salary of Government officials payable on by US](#)
- [18 USC § 216. Penalties and injunctions](#)
- [18 USC § 218. Voiding transactions in violation of chapter](#)
- [18 USC § 219. Acting as agents of foreign principals](#)

OGE Standard of

Conduct Regulations

(links to OGE web site)

- [5 CFR § 2634 Executive Branch Financial Disclosure, Qualified Trusts, and](#)

[Certificates of](#)

[Divestiture](#)

- [5 CFR § 2635](#)

[Standards of Ethical](#)

[Conduct for](#)

[Employees of the](#)

[Executive Branch](#)

- [5 CFR § 2536](#)

[Limitations on](#)

[Outside Earned](#)

[Income,](#)

[Employment, and](#)

[Affiliations for](#)

[Certain Noncareer](#)

[Employees](#)

- [5 CFR § 2637](#)

[Regulations](#)

[Concerning Post](#)

[Employment](#)

[Conflict of Interest](#)

- [5 CFR § 2638 Office](#)

[of Government](#)

[Ethics and Executive](#)

[Agency Ethics](#)

[Program](#)

[Responsibilities](#)

- [5 CFR § 2640](#)

[Interpretation,](#)

[Exemptions and](#)

[Waiver Guidance](#)

[Concerning 18 USC](#)

[208](#)

- [5 CFR § 2641 Post-employment conflict of interest restrictions](#)

For assistance in finding applicable statutes and regulations and their interpretation, contact your agency's [Ethics Contact](#).

Last Updated: 6/22/06

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WAIS Document Retrieval From the U.S. Code Online via GPO Access

[wais.access.gpo.gov]

[Laws in effect as of January 7, 2003]

[Document not affected by Public Laws enacted between
January 7, 2003 and February 12, 2003]

[CITE: 18USC208]

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 11--BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Sec. 208. Acts affecting a personal financial interest

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or an officer or employee of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest--

Shall be subject to the penalties set forth in section 216 of this title.

(b) Subsection (a) shall not apply--

(1) if the officer or employee first advises the Government official responsible for appointment to his or her position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to

affect the integrity of the services which the Government may expect from such officer or employee;

(2) if, by regulation issued by the Director of the Office of Government Ethics, applicable to all or a portion of all officers and employees covered by this section, and published in the Federal Register, the financial interest has been exempted from the requirements of subsection (a) as being too remote or too inconsequential to affect the integrity of the services of the Government officers or employees to which such regulation applies;

(3) in the case of a special Government employee serving on an advisory committee within the meaning of the Federal Advisory Committee Act (including an individual being considered for an appointment to such a position), the official responsible for the employee's appointment, after review of the financial disclosure report filed by the individual pursuant to the Ethics in Government Act of 1978, certifies in writing that the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest involved; or

(4) if the financial interest that would be affected by the particular matter involved is that resulting solely from the interest of the officer or employee, or his or her spouse or minor child, in birthrights--

(A) in an Indian tribe, band, nation, or other organized group or community, including any Alaska Native village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians,

(B) in an Indian allotment the title to which is held in trust by the United States or which is inalienable by the allottee without the consent of the United States, or

(C) in an Indian claims fund held in trust or administered by the United States,

if the particular matter does not involve the Indian allotment or claims fund or the Indian tribe, band, nation, organized group or community, or Alaska Native village corporation as a specific party or parties.

(c)(1) For the purpose of paragraph (1) of subsection (b), in the case of class A and B directors of Federal Reserve banks, the Board of Governors of the Federal Reserve System shall be deemed to be the Government official responsible for appointment.

(2) The potential availability of an exemption under any particular paragraph of subsection (b) does not preclude an exemption being granted pursuant to another paragraph of subsection (b).

(d)(1) Upon request, a copy of any determination granting an exemption under subsection (b)(1) or (b)(3) shall be made available to the public by the agency granting the exemption pursuant to the procedures set forth in section 105 of the Ethics in Government Act of 1978. In making such determination available, the agency may withhold from disclosure any information contained in the determination that would be exempt from disclosure under section 552 of title 5. For purposes of determinations under subsection (b)(3), the information describing each financial interest shall be no more extensive than that required of the individual in his or her financial disclosure report under the Ethics in Government Act of 1978.

(2) The Office of Government Ethics, after consultation with the Attorney General, shall issue uniform regulations for the issuance of waivers and exemptions under subsection (b) which shall--

(A) list and describe exemptions; and

(B) provide guidance with respect to the types of interests that are not so substantial as to be deemed likely to affect the integrity of the services the Government may expect from the employee.

(Added Pub. L. 87-849, Sec. 1(a), Oct. 23, 1962, 76 Stat. 1124; amended Pub. L. 95-188, title II, Sec. 205, Nov. 16, 1977, 91 Stat. 1388; Pub. L. 101-194, title IV, Sec. 405, Nov. 30, 1989, 103 Stat. 1751; Pub. L. 101-280, Sec. 5(e), May 4, 1990, 104 Stat. 159; Pub. L. 103-322, title XXXIII, Secs. 330002(b), 330008(6), Sept. 13, 1994, 108 Stat. 2140, 2143.)

References in Text

The Federal Advisory Committee Act, referred to in subsec. (b)(3), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Ethics in Government Act of 1978, referred to in subsecs. (b)(3) and (d)(1), is Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1824, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95-521 in the Appendix to Title 5 and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (b)(4)(A), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (Sec. 1601 et seq.) of Title

43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Prior Provisions

A prior section 208, act June 25, 1948, ch. 645, 62 Stat. 693, related to the acceptance of solicitation of a bribe by a judicial officer, prior to the general amendment of this chapter by Pub. L. 87-849 and is substantially covered by revised section 201.

Provisions similar to those comprising this section were contained in section 434 of this title prior to the repeal of such section and the general amendment of this chapter by Pub. L. 87-849.

Amendments

1994--Subsec. (b)(4). Pub. L. 103-322, Sec. 330008(6), inserted ``if" after ``(4)".

Subsec. (c)(1). Pub. L. 103-322, Sec. 330002(b), substituted ``banks" for ``Banks".

1990--Subsec. (a). Pub. L. 101-280, Sec. 5(e)(2), made technical correction to directory language of Pub. L. 101-194, Sec. 405(1)(C). See 1989 Amendment note below.

Subsec. (b)(2). Pub. L. 101-280, Sec. 5(e)(1)(A), substituted ``subsection (a)" for ``paragraph (1)".

Subsec. (b)(3). Pub. L. 101-280, Sec. 5(e)(1)(B), struck out ``section 107 of" after ``individual pursuant to".

Subsec. (d)(1). Pub. L. 101-280, Sec. 5(e)(1)(C), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ``A copy of any determination by other than the Director of the Office of Government Ethics granting an exemption pursuant to subsection (b)(1) or (b)(3) shall be submitted to the Director, who shall make all determinations available to the public pursuant to section 105 of the Ethics in Government Act of 1978. For determinations pursuant to subsection (b)(3), the information from the financial disclosure report of the officer or employee involved describing the asset or assets that necessitated the waiver shall also be made available to the public. This subsection shall not apply, however, if the head of the agency or his or her designee determines that the determination under subsection (b)(1) or (b)(3), as the case may be, involves classified information."

1989--Subsec. (a). Pub. L. 101-194, Sec. 405(1), as amended by Pub. L. 101-280, Sec. 5(e)(2), inserted ``or" after ``United States

Government," and ``an officer or employee" before ``of the District of Columbia", substituted ``general partner" for ``partner" in two places, and substituted ``Shall be subject to the penalties set forth in section 216 of this title" for ``Shall be fined not more than \$10,000, or imprisoned not more than two years, or both".

Subsec. (b). Pub. L. 101-194, Sec. 405(2), added subsec. (b) and struck out former subsec. (b), which read as follows: ``Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services. In the case of class A and B directors of Federal Reserve banks, the Board of Governors of the Federal Reserve System shall be the Government official responsible for appointment."

Subsecs. (c), (d). Pub. L. 101-194, Sec. 405(2), added subsecs. (c) and (d).

1977--Subsec. (a). Pub. L. 95-188, Sec. 205(a), extended conflicts of interest prohibition to a Federal Reserve bank director, officer, or employee.

Subsec. (b). Pub. L. 95-188, Sec. 205(b), inserted at end ``In the case of class A and B directors of Federal Reserve banks, the Board of Governors of the Federal Reserve System shall be the Government official responsible for appointment."

Effective Date

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87-849, set out as a note under section 201 of this title.

Exemptions

Exemptions from former section 434 of this title deemed to be

exemptions from this section, see section 2 of Pub. L. 87-849, set out as a note under section 203 of this title.

Regulations

Responsibility of Office of Government Ethics for promulgating regulations and interpreting this section, see section 201(c) of Ex. Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended, set out as a note under section 7301 of Title 5, Government Organization and Employees.

Delegation of Authority

Authority of the President under subsec. (b) of this section to grant exemptions or approvals to individuals delegated to agency heads, see section 401 of Ex. Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended, set out as a note under section 7301 of Title 5, Government Organization and Employees.

Authority of the President under subsec. (b) of this section to grant exemptions or approvals for Presidential appointees to committees, commissions, boards, or similar groups established by the President, and for individuals appointed pursuant to sections 105 and 107(a) of Title 3, The President, delegated to Counsel to the President, see section 402 of Ex. Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended, set out as a note under section 7301 of Title 5.

``Particular Matter" Defined

Pub. L. 100-446, title III, Sec. 319, Sept. 27, 1988, 102 Stat. 1826, which provided that notwithstanding any other provision of law, for the purposes of this section ``particular matter", as applied to employees of the Department of the Interior and the Indian Health Service, means ``particular matter involving specific parties", was repealed by Pub. L. 101-194, title V, Sec. 505(b), Nov. 30, 1989, 103 Stat. 1756, as amended by Pub. L. 101-280, Sec. 6(c), May 4, 1990, 104 Stat. 160.

Similar provisions were contained in Pub. L. 100-202, Sec. 101(g) [title III, Sec. 318], Dec. 22, 1987, 101 Stat. 1329-213, 1329-255.

Section Referred to in Other Sections

This section is referred to in sections 14, 202, 216 of this title; title 5 sections 568, 3374; title 7 section 2009aa-1; title 10 section 9447; title 12 section 2245; title 15 section 4805; title 16 section 1852; title 20 section 5508; title 22 sections 3507, 3508, 3613, 3622; title 26 section 1043; title 28 section 594; title 28 App. section 302; title 40 App. section 108; title 41 section 423; title 42 section 1396a; title 47 section 154; title 49 section 106.

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TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 11--BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Sec. 209. Salary of Government officials and employees payable
only by United States

(a) Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or

Whoever, whether an individual, partnership, association, corporation, or other organization pays, or makes any contribution to, or in any way supplements the salary of, any such officer or employee under circumstances which would make its receipt a violation of this subsection--

Shall be subject to the penalties set forth in section 216 of this title.

(b) Nothing herein prevents an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, or of the District of Columbia, from continuing to participate in a bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer.

(c) This section does not apply to a special Government employee or to an officer or employee of the Government serving without compensation, whether or not he is a special Government employee, or to any person paying, contributing to, or supplementing his salary as such.

(d) This section does not prohibit payment or acceptance of

contributions, awards, or other expenses under the terms of chapter 41 of title 5.

(e) This section does not prohibit the payment of actual relocation expenses incident to participation, or the acceptance of same by a participant in an executive exchange or fellowship program in an executive agency: Provided, That such program has been established by statute or Executive order of the President, offers appointments not to exceed three hundred and sixty-five days, and permits no extensions in excess of ninety additional days or, in the case of participants in overseas assignments, in excess of three hundred and sixty-five days.

(f) This section does not prohibit acceptance or receipt, by any officer or employee injured during the commission of an offense described in section 351 or 1751 of this title, of contributions or payments from an organization which is described in section 501(c)(3) of the Internal Revenue Code of 1986 and which is exempt from taxation under section 501(a) of such Code.

(Added Pub. L. 87-849, Sec. 1(a), Oct. 23, 1962, 76 Stat. 1125; amended Pub. L. 96-174, Dec. 29, 1979, 93 Stat. 1288; Pub. L. 97-171, Apr. 13, 1982, 96 Stat. 67; Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99-646, Sec. 70, Nov. 10, 1986, 100 Stat. 3617; Pub. L. 101-194, title IV, Sec. 406, Nov. 30, 1989, 103 Stat. 1753; Pub. L. 101-647, title XXXV, Sec. 3510, Nov. 29, 1990, 104 Stat. 4922; Pub. L. 103-322, title XXXIII, Sec. 330008(7), Sept. 13, 1994, 108 Stat. 2143.)

References in Text

Section 501 of the Internal Revenue Code of 1986, referred to in subsec. (f), is classified to section 501 of Title 26, Internal Revenue Code.

Prior Provisions

A prior section 209, act June 25, 1948, ch. 645, 62 Stat. 693, related to an offer of a bribe to a witness, prior to the general amendment of this chapter by Pub. L. 87-849 and is substantially covered by section 201.

Provisions similar to those comprising this section were contained in section 1914 of this title prior to the repeal of such section and the general amendment of this chapter by Pub. L. 87-849.

Amendments

1994--Subsec. (d). Pub. L. 103-322 struck out ``the" before ``chapter 41".

1990--Subsec. (d). Pub. L. 101-647 substituted ``chapter 41 of title 5" for ``Government Employees Training Act (Public Law 85-507, 72 Stat. 327; 5 U.S.C. 2301-2319, July 7, 1958)".

1989--Subsec. (a). Pub. L. 101-194 substituted at end ``Shall be subject to the penalties set forth in section 216 of this title." for ``Shall be fined not more than \$5,000 or imprisoned not more than one year, or both."

1986--Subsec. (e). Pub. L. 99-646 inserted ``or, in the case of participants in overseas assignments, in excess of three hundred and sixty-five days".

Subsec. (f). Pub. L. 99-514 substituted ``Internal Revenue Code of 1986" for ``Internal Revenue Code of 1954".

1982--Subsec. (f). Pub. L. 97-171 added subsec. (f).

1979--Subsec. (e). Pub. L. 96-174 added subsec. (e).

Effective Date

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub. L. 87-849, set out as a note under section 201 of this title.

Exemptions

Exemptions from former section 1914 of this title deemed to be exemptions from this section, see section 2 of Pub. L. 87-849, set out as a note under section 203 of this title.

Promulgation of Regulations

Responsibility of Office of Government Ethics for promulgating regulations and interpreting this section, see section 201(c) of Ex. Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended, set out as a note under section 7301 of Title 5, Government Organization and Employees.

Section Referred to in Other Sections

This section is referred to in sections 14, 202, 216 of this title;

title 2 section 162; title 5 sections 568, 3102, 3343, 3374, 4111; title 7 sections 2009aa-1, 2220; title 8 section 1353c; title 12 section 2245; title 16 section 459b-7; title 22 sections 3507, 3508; title 28 section 594; title 30 section 663; title 40 App. section 108; title 42 sections 280e-11, 1314; title 45 section 362.

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[CITE: 18USC216]

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 11--BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Sec. 216. Penalties and injunctions

(a) The punishment for an offense under section 203, 204, 205, 207, 208, or 209 of this title is the following:

(1) Whoever engages in the conduct constituting the offense shall be imprisoned for not more than one year or fined in the amount set forth in this title, or both.

(2) Whoever willfully engages in the conduct constituting the offense shall be imprisoned for not more than five years or fined in the amount set forth in this title, or both.

(b) The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under section 203, 204, 205, 207, 208, or 209 of this title and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than \$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

(c) If the Attorney General has reason to believe that a person is engaging in conduct constituting an offense under section 203, 204, 205, 207, 208, or 209 of this title, the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds

that the conduct constitutes such an offense. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.

(Added Pub. L. 101-194, title IV, Sec. 407(a), Nov. 30, 1989, 103 Stat. 1753; amended Pub. L. 101-280, Sec. 5(f), May 4, 1990, 104 Stat. 159.)

Prior Provisions

A prior section 216, acts June 25, 1948, ch. 645, 62 Stat. 695, Sec. 216, formerly Sec. 221, amended Aug. 21, 1958, Pub. L. 85-699, title VII, Sec. 702(a)-(c), 72 Stat. 698; Aug. 18, 1959, Pub. L. 86-168, title I, Sec. 104(h), 73 Stat. 387, and renumbered Oct. 23, 1962, Pub. L. 87-849, Sec. 1(d), 76 Stat. 1125, related to receipt or charge of commissions or gifts for farm loan, land bank, or small business transactions, prior to repeal by Pub. L. 98-473, title II, Sec. 1107(b), Oct. 12, 1984, 98 Stat. 2146.

Another prior section 216, act June 25, 1948, ch. 645, 62 Stat. 694, which related to procurement of a contract by an officer or Member of Congress, was repealed by section 1(c) of Pub. L. 87-849.

Amendments

1990--Subsec. (a). Pub. L. 101-280, Sec. 5(f)(1), substituted ``section 203, 204, 205, 207, 208, or 209" for ``sections 203, 204, 205, 207, 208, and 209".

Subsec. (b). Pub. L. 101-280, Sec. 5(f)(2), substituted ``section 203, 204, 205, 207, 208, or 209" for ``sections 203, 204, 205, 207, 208, and 209".

Section Referred to in Other Sections

This section is referred to in sections 203, 204, 205, 207, 208, 209 of this title.

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TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 11--BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Sec. 218. Voiding transactions in violation of chapter; recovery
by the United States

In addition to any other remedies provided by law the President or, under regulations prescribed by him, the head of any department or agency involved, may declare void and rescind any contract, loan, grant, subsidy, license, right, permit, franchise, use, authority, privilege, benefit, certificate, ruling, decision, opinion, or rate schedule awarded, granted, paid, furnished, or published, or the performance of any service or transfer or delivery of any thing to, by or for any agency of the United States or officer or employee of the United States or person acting on behalf thereof, in relation to which there has been a final conviction for any violation of this chapter, and the United States shall be entitled to recover in addition to any penalty prescribed by law or in a contract the amount expended or the thing transferred or delivered on its behalf, or the reasonable value thereof.

(Added Pub. L. 87-849, Sec. 1(e), Oct. 23, 1962, 76 Stat. 1125.)

Prior Provisions

A prior section 218 of this title was renumbered section 213.

Effective Date

Section effective 90 days after Oct. 23, 1962, see section 4 of Pub.

L. 87-849, set out as a note under section 201 of this title.

Ex. Ord. No. 12448. Exercise of Authority

Ex. Ord. No. 12448, Nov. 4, 1983, 48 F.R. 51281, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including section 218 of title 18 of the United States Code, and in order to provide federal agencies with the authority to promulgate regulations for voiding or rescinding contracts or other benefits obtained through bribery, graft or conflict of interest, it is hereby ordered as follows:

Section 1. The head of each Executive department, Military department and Executive agency is hereby delegated the authority vested in the President to declare void and rescind the transactions set forth in section 218 of title 18 of the United States Code in relation to which there has been a final conviction for any violation of chapter 11 of title 18.

Sec. 2. The head of each Executive department and agency described in section 1 may exercise the authority hereby delegated by promulgating implementing regulations; provided that the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration jointly shall issue government-wide implementing regulations related to voiding or rescission of contracts.

Sec. 3. Implementing regulations adopted pursuant to this Order shall, at a minimum, provide the following procedural protections:

- (a) Written notice of the proposed action shall be given in each case to the person or entity affected;
- (b) The person or entity affected shall be afforded an opportunity to submit pertinent information on its behalf before a final decision is made;
- (c) Upon the request of the person or entity affected, a hearing shall be held at which it shall have the opportunity to call witnesses on its behalf and confront any witness the agency may present; and
- (d) The head of the agency or his designee shall issue a final written decision specifying the amount of restitution or any other remedy authorized by section 218, provided that such remedy shall take into consideration the fair value of any tangible benefits received and retained by the agency.

Ronald Reagan.

Section Referred to in Other Sections

This section is referred to in sections 14, 202 of this title.

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TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 11--BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Sec. 219. Officers and employees acting as agents of foreign
principals

(a) Whoever, being a public official, is or acts as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938 or a lobbyist required to register under the Lobbying Disclosure Act of 1995 in connection with the representation of a foreign entity, as defined in section 3(6) of that Act shall be fined under this title or imprisoned for not more than two years, or both.

(b) Nothing in this section shall apply to the employment of any agent of a foreign principal as a special Government employee in any case in which the head of the employing agency certifies that such employment is required in the national interest. A copy of any certification under this paragraph shall be forwarded by the head of such agency to the Attorney General who shall cause the same to be filed with the registration statement and other documents filed by such agent, and made available for public inspection in accordance with section 6 of the Foreign Agents Registration Act of 1938, as amended.

(c) For the purpose of this section ``public official" means Member of Congress, Delegate, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency, or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government.

(Added Pub. L. 89-486, Sec. 8(b), July 4, 1966, 80 Stat. 249; amended Pub. L. 98-473, title II, Sec. 1116, Oct. 12, 1984, 98 Stat. 2149; Pub.

L. 99-646, Sec. 30, Nov. 10, 1986, 100 Stat. 3598; Pub. L. 101-647, title XXXV, Sec. 3511, Nov. 29, 1990, 104 Stat. 4922; Pub. L. 104-65, Sec. 12(b), Dec. 19, 1995, 109 Stat. 701.)

References in Text

The Foreign Agents Registration Act of 1938, as amended, referred to in subsec. (a), is act June 8, 1938, ch. 327, 52 Stat. 631, as amended, which is classified generally to subchapter II (Sec. 611 et seq.) of chapter 11 of Title 22, Foreign Relations and Intercourse. Section 6 of the Foreign Agents Registration Act of 1938 is classified to section 616 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 611 of Title 22 and Tables.

The Lobbying Disclosure Act of 1995, referred to in subsec. (a), is Pub. L. 104-65, Dec. 19, 1995, 109 Stat. 691, which is classified principally to chapter 26 (Sec. 1601 et seq.) of Title 2, The Congress. Section 3(6) of the Act is classified to section 1602(6) of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 2 and Tables.

Prior Provisions

A prior section 219 was renumbered section 214.

Amendments

1995--Subsec. (a). Pub. L. 104-65 substituted ``or a lobbyist required to register under the Lobbying Disclosure Act of 1995 in connection with the representation of a foreign entity, as defined in section 3(6) of that Act" for ``, as amended,".

1990--Subsec. (c). Pub. L. 101-647 substituted ``Government" for ``Governments" before ``thereof".

1986--Subsec. (a). Pub. L. 99-646, Sec. 30(1), designated first par. as subsec. (a) and amended it generally, which prior to amendment read as follows: ``Whoever, being a public official of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, is or acts as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938, as amended, shall be fined not more than \$10,000 or imprisoned for not more than two years, or both."

Subsec. (b). Pub. L. 99-646, Sec. 30(2), designated second par. as subsec. (b).

Subsec. (c). Pub. L. 99-646, Sec. 30(2), (3), designated third par. as subsec. (c) and substituted ``Delegate" for ``Delegate from the District of Columbia" and ``branch of Government" for ``branch of Government, or a juror".

1984--Pub. L. 98-473 substituted ``a public official" for ``an officer or employee" in first par., and inserted par. defining ``public official".

Effective Date of 1995 Amendment

Amendment by Pub. L. 104-65 effective Jan. 1, 1996, except as otherwise provided, see section 24 of Pub. L. 104-65, set out as an Effective Date note under section 1601 of Title 2, The Congress.

Effective Date

Section effective ninety days after July 4, 1966, see section 9 of Pub. L. 89-486, set out as an Effective Date of 1966 Amendment note under section 611 of Title 22, Foreign Relations and Intercourse.